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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91180742
Party	Plaintiff Dr Pepper/Seven Up, Inc.
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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

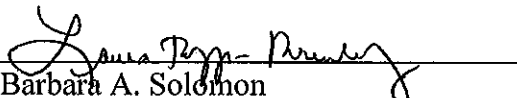
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DR PEPPER/SEVEN UP, INC.,	:	
	:	
Opposer/Petitioner,	:	<u>Consolidated Proceedings</u>
	:	Opposition No. 91180742
- against -	:	Cancellation No. 92048446
	:	
KRUSH GLOBAL LIMITED,	:	
	:	
Applicant/Registrant.	:	
-----X		

NOTICE OF FILING OF CERTIFIED DEPOSITION TRANSCRIPT

PLEASE TAKE NOTICE that pursuant to 37 C.F.R. § 2.125(c), a certified transcript of the July 31, 2009 Testimonial Deposition of James Peter Needham Learmond has been filed with the Trademark Trial and Appeal Board contemporaneously herewith.

Dated: New York, New York
October 13, 2009

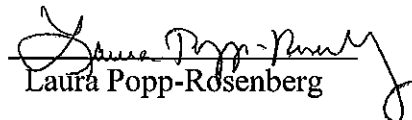
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Notice of Filing Certified Deposition Transcript** to be to be served by prepaid, First Class mail on Applicant/Registrant's attorney, Jason M. Drangel, Esq., Epstein Drangel Bazerman & James LLP, 60 East 42nd Street, Suite 820, New York, New York 10165, this 13th day of October, 2009.


Laura Popp-Rosenberg

**IN THE UNITED STATES PARENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DR PEPPER/SEVEN UP, INC.

Opposer/Petitioner

v.

KRUSH GLOBAL LIMITED,

Applicant/Registrant

**Consolidated
Proceedings**

**Opposition No.
91180742**

**Cancellation No.
92048446**

**TELEPHONIC DEPOSITION OF
JAMES PETER NEEDHAM LEARMOND**

VOLUME I

**July 31, 2009
1:10 p.m. (U.K. time)**

**Newland House
Newland
Gloucestershire
GL16 8NN
United Kingdom**

**Georgina Ford, MBIVR
Accredited Real-time Reporter**



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IN THE UNITED STATES PARENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DR PEPPER/SEVEN UP, INC.)
)
Opposer/Petitioner)
) Consolidated
Proceedings v.)
91180742) Opposition No.
) Cancellation No.
92048446)
KRUSH GLOBAL LIMITED,)
)
Applicant/Registrant)

TELEPHONIC DEPOSITION OF JAMES PETER NEEDHAM

LEARMOND

VOLUME I

Friday, July 31, 2009

AT:

Taken at: 1:10 p.m. (U.K. time)

Newland House
Newland
Gloucestershire
GL16 8NN
United Kingdom

Court Reporter:

Georgina Ford, MBIVR
Accredited Real-time Reporter



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1 JAMES PETER NEEDHAM LEARMOND,

2 having been duly sworn,

3 testified as follows:

4 MS. POPP-ROSENBERG: I just wanted to
5 put a couple of stipulations that the parties have
6 agreed to on the record. First, the parties have
7 stipulated that the direct testimony of Mr James
8 Learmond will be by the declaration that has
9 already been submitted in that this deposition is
10 being conducted for cross-examination purposes.
11 Dr. Pepper will be responsible for all the
12 formalities with regard to the transcript of the
13 deposition. Krush Global has not waived signature
14 for the deposition. The parties have also
15 stipulated that the transcript of the deposition
16 will be kept confidential at least for the first
17 30 days and we will figure out what we're going to
18 do beyond that as well.

19 Also pursuant to agreement, the
20 deposition is being conducted telephonically with
21 Mr. Learmond appearing at his home in the United
22 Kingdom and also I just wanted to say that
23 I understand Mr. Learmond has travel plans for
24 later today. We're going to try to conduct this
25 deposition as expeditiously as possible but we do



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1 have a right to seven hours and if for some
2 Mr. Learmond has to leave before I have my
3 seven hours or completed my questions, we just
4 reserve the right to continue the deposition as
5 necessary.

6 Is everyone clear on those stipulations?

7 MR. DRANGEL: Yes.

8 MS. POPP-ROSENBERG: Okay.

9 MR. DRANGEL: Jason Drangel is here with
10 Ms. Rosenberg in New York, also for the
11 deposition.

12 MS. POPP-ROSENBERG: Thank you for
13 reminding me to introduce myself. I am with law
14 firm of Fross, Zelnick, Lehrman & Zissu. We
15 represent the Opposer and the Petitioner in these
16 consolidated proceedings and the name of that
17 party is Dr. Pepper/Seven Up Inc. I'm going to be
18 conducting cross-examination today.

19 Cross-examination by MS. POPP-ROSENBERG:

20 Q. Could you please state your full
21 name for the record?

22 A. James Peter Needham Learmond.

23 Q. And your address, please?

24 A. It's Newland House, Newland,
25 Gloucestershire, GL16 8NN.



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1 Q. Mr. Learmond, have you ever been
2 deposed before today?

3 A. No.

4 Q. Then let me go through a couple of
5 ground rules. Obviously I'm going to be asking
6 you questions and it's your job to respond to
7 them. Because you are under oath, you will have
8 to respond to them as honestly and truthfully as
9 you can. If I ask a question that you don't
10 understand, let me know and I'll try to rephrase
11 it in a way that you can understand.

12 During the course of the deposition
13 I may ask you to look at certain material. So if
14 I do ask you to look at a document or something,
15 if you could just take your time to look at it and
16 let me know when you're ready and obviously if
17 I ask a question and you want to look back at the
18 document more carefully, just let me know that and
19 we can make time for that as well. It's not
20 a problem.

21 The Court Reporter who is with you will
22 be transcribing what you say so we need to make
23 sure a couple of things. First, you should try to
24 avoid talking over each other, which will be good
25 since we're on speakerphone, and also if you could



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1 speak your answers rather than just nodding or
2 shaking your head because the Court Reporter can't
3 write that down and since I'm not there with you,
4 I won't be able to see that.

5 Like I said, we're going to try to do
6 this deposition as expeditiously as possible and
7 so I guess we'll try to avoid taking breaks on our
8 end but if you need a break, just let us know and
9 we can go ahead and take one. I just ask that you
10 don't take a break while a question is pending.

11 Does all that that I've just said make
12 sense to you?

13 A. Yes, it does. I've agreed with my
14 wife that we'll probably have to leave tomorrow
15 morning now so don't worry too much about getting
16 it done as quickly as we originally thought.
17 We've changed our plans now and we think we're
18 going to go in the morning.

19 Q. Okay. Well, I hope you'll still be
20 able to go this evening but we'll see what
21 happens. So thank you for that.

22 A. Okay.

23 Q. So throughout the deposition today,
24 because my client has a very long name, I'm going
25 to probably refer to them just as "Dr Pepper". Is



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1 that okay?

2 A. Sure.

3 Q. And I'll probably refer to the
4 other party in the proceeding, Krush Global
5 Limited, just as "Krush Global". Is that okay?

6 A. Yes.

7 Q. Is there any reason that you can't
8 testify truthfully and to the best of your ability
9 today?

10 A. No.

11 Q. Okay. Are you on any medications
12 that affect your memory or ability to speak?

13 A. No.

14 Q. I know that you've said you've
15 never been deposed before. Have you ever been
16 a witness in a trial?

17 A. No.

18 Q. Have you ever personally been
19 a party to a lawsuit?

20 A. Gosh ...

21 Q. I'm sorry, we didn't hear
22 a response.

23 A. No, I was just thinking. I was
24 thinking no, not -- no, not that I can think of
25 no. I mean, apart from a speeding offense if



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1 that's considered a law ...

2 Q. In preparation for today's
3 deposition, did you meet with counsel?

4 A. No, we didn't meet. We spoke.

5 Q. Did you speak with counsel then?

6 A. Yes.

7 Q. And when did you speak with
8 counsel?

9 A. Yesterday and this morning.

10 Q. And during your conversation with
11 counsel, did you look at any documents?

12 A. Yes.

13 Q. Were those documents documents that
14 had been submitted in connection with your
15 declaration or were they other documents or both?

16 A. They were other documents -- well,
17 both, both.

18 Q. And were those other documents
19 documents that I had provided for to be used as
20 exhibits in today's deposition?

21 A. Yes.

22 Q. Any other documents in addition to
23 those?

24 A. No.

25 Q. I would like you to -- if the Court



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1 Reporter could pull out the document that has the
2 cover sheet A on it. Let's go off the record for
3 just one second.

4 (Off the record.)

5 BY MS. POPP-ROSENBERG

6 Q. We can go back on the record. I'm
7 not going to mark this as an exhibit since it's
8 already been entered in the proceeding. Mr.
9 Learmond, if you can just look through it, if you
10 want to look through the document, but let me know
11 when you are ready for me to ask questions about
12 the document.

13 A. Okay.

14 Q. Could you identify what's been
15 handed to you just so I make sure we're both
16 looking at same thing?

17 A. It says "Trial declaration of James
18 Learmond."

19 Q. If you could slip to, I guess --
20 the second page that is numbered 5 that has
21 a signature on it.

22 A. Yes.

23 Q. Is that your signature?

24 A. Yes, it is.

25 Q. Did you yourself draft this trial



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1 declaration?

2 A. No.

3 Q. Do you know who did?

4 A. I don't, no. I assume Jason.

5 Q. And there's a number of exhibits
6 that are attached to the declaration. Did you put
7 those exhibits together?

8 A. No.

9 Q. Do you know who put those together?

10 A. No. My counsel -- well, my
11 counsel.

12 Q. I assume that you are familiar with
13 the statement and the exhibits in the declaration
14 and, as you sit here today, are there any
15 statements in the declaration that you believe to
16 be inaccurate?

17 A. No.

18 Q. So are there any statements in the
19 declaration that you would like to change for any
20 reason?

21 A. No.

22 Q. And are there any statements in the
23 declaration that you'd like to clarify at this
24 point?

25 A. No.



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1 Q. Thank you.

2 According to the declaration, you're the
3 founder, chairman and director of a company called
4 Krush Global. Is that correct?

5 A. Yes.

6 Q. And what is the business of Krush
7 Global?

8 A. It operates a sort of
9 cafe/restaurant business which has as its sort of
10 main sort of central point a sort of juice --
11 fresh juice and smoothie bar and then we serve
12 healthy food along with that to accompany it.

13 Q. Is there anything in addition to
14 operating these restaurant or cafes, as you called
15 them, that Krush Global does?

16 A. No.

17 Q. Do the restaurants that Krush
18 Global operates, do they have a name?

19 A. CRUSSH.

20 Q. CRUSSH, okay.

21 In addition of being a founder, chairman
22 and director of Krush Global, do you have any
23 other titles or positions in the company?

24 A. I deal with the property side of
25 the business. So where there are new properties



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1 that they want to look at, I get involved in that.

2 Q. Do you hold any officer title of
3 the company?

4 A. Director.

5 Q. Director?

6 A. Yes.

7 Q. And so you said you work on the
8 property side of the business. Could you explain
9 in a little more detail exactly what you do with
10 the respect to that?

11 A. When one of our property agents
12 finds or identifies a new site, they ring me up
13 and I will go and look at the site and talk with
14 the managing director about whether it's a good
15 site for us to open in.

16 Q. And is there anything else that you
17 do in addition to your role working with the
18 properties for Krush Global?

19 A. Yes. I mean, I'll liaise with the
20 lawyers when it comes to the legal work and
21 I liaise with the agents and with the managing
22 director.

23 Q. I'm worried we're getting cut out.
24 Did you say after you "liaise with the agents"?

25 A. The agent, the lawyers and the



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1 managing director. Hello?

2 Q. And I take it, since you're one of
3 the founders of Krush Global, that you have been
4 with the business since its inception. Is that
5 correct?

6 A. Yes.

7 Q. And when was that?

8 A. The inception was some time in
9 1997, as far as I can remember, and then we spent
10 a lot of time obviously trying to build the
11 business, put it together and the first store
12 opened in September or October '98.

13 Q. Let's take since '98 when the first
14 store opened, since I imagine before that there
15 was a lot of work in starting the business that
16 you don't necessarily have to do now, but starting
17 in '98, has your role at Krush Global changed over
18 the years?

19 A. Well, originally there were three
20 people involved in starting the business and I was
21 one of those three. My role really was to provide
22 half the money and I was not operational. I
23 didn't know anything about the food business, so
24 I was never going to be operational and I had
25 a property business that I was concentrating on.



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1 So the other two were supposed to be
2 running the business operationally and hiring
3 people who did know about the food business and
4 I said I would just help with the property side,
5 because that's what I knew about, and obviously
6 provide my share of the money.

7 But very soon after we opened that did
8 change. Probably within a year I had to become
9 more hands-on because the two people that I opened
10 the business with -- well, they sort of failed to
11 put their money in and things changed a lot. So I
12 ended up owning a lot more of the business than
13 I thought I was going to.

14 Q. So was there a point that you
15 became more involved with the operational side of
16 the business?

17 A. Well, yes -- some time in '99. But
18 we always hired somebody who knew about
19 restaurants. We hired a restaurant catering
20 manager and then he went and then we hired
21 a friend of mine who was in restaurants and he
22 stayed for a while -- '99/2000 I think he stayed
23 for. So they were always really doing the
24 operational role as such, but I was definitely
25 more involved then, yes. And we had a chef,



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1 a kitchen -- because we have a central kitchen.
2 So the fairly key figure was also the chef making
3 the food and he was in charge of that.

4 So I didn't have an operational role in
5 terms of the food or the sort of day-to-day
6 running of the shops or the people, although there
7 was one particularly difficult time when I ended
8 up actually having to be in one of the shops, much
9 against my wishes, but we ran out of people and we
10 were up against the wall. So that did happen,
11 yes.

12 Q. I think you mentioned that when you
13 first started the business you didn't really know
14 that much about the operations of running
15 a restaurant business. Is that accurate?

16 A. Absolutely accurate, yes.

17 Q. And then since that time in
18 '97/'98, would you consider yourself now to be
19 knowledgeable about the business of operating
20 restaurants?

21 A. I don't know. I mean, as I said,
22 I have never been particularly operational.
23 I understand a lot more about the difficulties
24 involved in hiring staff and things like that and
25 health and safety issues, but I've never been



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1 really the person on the front line. But, yes,
2 I do know a lot more than I did, yes.

3 Q. So, since the beginning of Krush
4 Global, have you had a lot of interaction with the
5 consumers that come to your restaurant?

6 A. Well, the period when I had to work
7 in one of the stores, yes, I did obviously because
8 I was behind the till at one stage, so ... but it
9 was a fairly brief period of time, that.

10 But otherwise, yes, I get e-mails from
11 customers with complaints or even with praise and
12 I reply to those e-mails if they come to my -- on
13 the website, there's my e-mail address available
14 to customers to make comments on.

15 Q. And what was the time period that
16 you actually worked in one of the CRUSSH
17 restaurants?

18 A. For how long?

19 Q. Well, first of all, approximately
20 when it was, what year, and then also for how
21 long.

22 A. I really, really can't remember
23 very clearly but it would have been after '99
24 ... I don't know. I can't remember. It would
25 have been around '99 or 2000. So pretty soon



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1 after we opened but after my original partners had
2 left, but I don't remember the dates that they
3 actually left either. So some time in '99,
4 I suspect -- probably towards the end of '99.

5 Q. And for how long a period? You
6 mentioned it was a short period.

7 A. Well, it was filling in while we
8 were short of managers and things. I mean,
9 a month I should think at the most. I don't think
10 it was more than a month.

11 Q. Now do you visit the CRUSSH
12 restaurants very often?

13 A. When I'm in London, which is for
14 one night -- usually for one night and two days
15 a week -- I will go into the ones close to where
16 I am having meetings and things. So usually
17 I will go into one once a week, yes.

18 Q. And what do you do when you're
19 visiting those CRUSSH stores?

20 A. I'm usually having a meeting with
21 someone.

22 Q. Do you ever talk to the patrons
23 while you're there?

24 A. Not specifically but, I mean,
25 I probably have done, yes. I mean, I don't go out



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1 of my way to talk to them but if somebody appears
2 to be having trouble with something or at the till
3 or something and I happen to be standing there,
4 I might help them and make a suggestion. But
5 I don't always necessarily say that I'm involved
6 in the business, I just sort of help.

7 Q. I guess since '97/'98 when you've
8 been starting up and then operating the Krush
9 Global business, have you been involved in any
10 other business enterprises?

11 A. Well, not during -- well, I had my
12 property business which is what, you know,
13 I thought I was going to carry on running but
14 CRUSSH sort of took over in that '99/2000 period.

15 I still have the property business. So
16 I've always had that. That's been my sort of main
17 business in a way. It's property and
18 property consultancy; so it's always been there.
19 I can't remember how much actual property business
20 I did in that period but, yes, it has always been
21 there. So, yes, I have had interests in other
22 businesses.

23 Q. Can you describe your property
24 business in a little more detail and tell us
25 exactly what you mean by that?



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1 A. Well, I think you call it real
2 estate probably. It was a mixture of buying flats
3 and houses in London that had sort of fallen down,
4 you know, were out of -- not literally fallen down
5 but were in bad repair and we used to do them up
6 and then sell them, and.

7 Then also I used to consult on other
8 property things for people. So somebody might
9 come to me and say, "Do you think this is a good
10 building to buy?" or ... what else would I have
11 done? That sort of thing, general sort of I think
12 we call it investment and development and
13 consultancy.

14 Q. And so you're still involved in
15 that property business currently?

16 A. I still have a -- yes, I still have
17 a property consultancy arm, as it were, but now
18 I have other businesses as well. So I haven't
19 done any -- well, I looked at a property today
20 actually but, yes, it's just me now. It's not
21 a company with people working for it like it was
22 once.

23 Q. So when did it kind of stop being
24 a company that had people working for it?

25 A. Some time around 2000, I suppose --



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1 2001.

2 Q. And what was that company's name?

3 A. It was called Realdom --

4 R-E-A-L-D-O-M.

5 Q. And how long had you been operating
6 the Realdom business?

7 A. I should think three/four years.
8 I can't exactly remember but somewhere around
9 about that.

10 Q. So some time in like '96 maybe you
11 started it?

12 A. Well, actually '96 -- it was
13 probably a little bit before that, '95/'96.
14 Because one of the people, one of the founders of
15 Krush, was one of the guys in my property
16 business.

17 Q. Did you own this property business
18 yourself?

19 A. No, there was a partner in it.

20 Q. So it was you and another partner
21 that owned the property business?

22 A. Yes.

23 Q. So then other than Krush Global and
24 Realdom, have you been involved in any other
25 businesses or jobs?



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1 A. What, ever?

2 Q. Well, let's say since you graduated
3 from university?

4 A. After university, yes, I worked for
5 a big commercial real estate company called
6 Hillier Parker which is now known as CBRE. It
7 changed its name over the years. It was one of
8 probably the big two in the U.K.

9 Then I left them and I had a period
10 working for the Zoological Society of London and
11 I had a sort of slightly sort of unemployed
12 period, but I kept sort of in touch with my
13 property contacts. After I left the Zoological
14 Society, I think I was what you might call
15 a courier for a while, a motorcycle courier, and
16 then I got back into property through a friend of
17 mine who asked me to help him on a deal he was
18 doing. Then since 2005/2004 I have invested in
19 other businesses.

20 Q. And these other businesses that you
21 invested in, you were involved in the management
22 of those businesses or purely investing or maybe
23 a directing role but not an operational role?

24 A. Yes, it's sort of -- it's a lower
25 key. It's not a full-time operational role. It's



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1 normally advising on the sort of again property
2 side, issues that come up that the management
3 don't feel that they have understanding of or
4 whatever, and so I sit in with them or talk to
5 them and help decide how to sort things out. But,
6 no, it's not full-time, no.

7 Q. Other than Krush Global, have you
8 been involved in any other restaurants or catering
9 or service businesses?

10 A. I invested in a restaurant in
11 London -- gosh, it must be nearly two years ago --
12 called the Café Anglais, which is quite a big
13 restaurant in Bayswater. But I'm a small
14 shareholder in that.

15 Q. Do you have any management
16 responsibilities in connection with that
17 restaurant?

18 A. No.

19 Q. Did you answer? Sorry, we didn't
20 hear you.

21 A. Sorry. No.

22 Q. Thank you.

23 What were you doing at the Zoological
24 Society of London?

25 A. I worked for a lady called



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1 Alexandra Dixon, who was head of the Conservation
2 and Consultancy Division which I don't think
3 exists any more. It was a part of -- I think it's
4 now been incorporated into a sort of bigger
5 structure, but it concentrated on conservation
6 projects in third world countries. So we would
7 send vets out to Kenya, for instance, to try and
8 teach their wildlife services how to manage their
9 wildlife parks, things like that, and I was sort
10 of a general dogsbody because I was very
11 interested in conservation and I wanted to get to
12 know it more. So I sort of put myself out to be
13 a general dogsbody and was used for various
14 things: Fund-raising, introducing people and
15 administrative roles.

16 Q. When did you graduate from
17 university?

18 A. 1989. Did you hear that?

19 Q. Yes, I did.

20 So you mentioned that you started Krush
21 Global with two other partners. What were their
22 names?

23 A. Richard Balado and James Deen.

24 Q. And you said those gentlemen are no
25 longer involved with the company. You can't

25

1 specifically remember when they stopped being
2 involved but do you have a rough idea of when that
3 was?

4 A. I think it must have been towards
5 the end of '99 or early 2000. It was around about
6 then.

7 Q. Why did they stop being involved in
8 the business?

9 A. Well, it was mainly to do with
10 money. They were supposed to be putting money in
11 and it took a long time to come in. So I was
12 having to put in all the money and then when money
13 did come in, it went out pretty quickly. I'm not
14 actually -- I don't really want to go into a huge
15 detail on what happened but it was a very
16 uncomfortable time personally and I lost several
17 friends in the process.

18 Q. Okay, that's fine. I actually
19 don't need the detail about it.

20 I think in paragraph 3 of your
21 declaration you state that there is 24 store
22 locations currently for CRUSSH. Is that correct?

23 A. I think so.

24 Q. Around that number?

25 A. Yes. Last time I looked I think it



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1 was 24, yes.

2 Q. And all of those locations are in
3 the U.K.?

4 A. Yes.

5 Q. Does Krush Global operate any
6 business outside of the U.K.?

7 A. No. We had a franchise agreement
8 in South Africa which we had a franchise partner
9 set up and we signed all the franchise agreements,
10 but they failed to open a store. So we have
11 actually -- in fact, I received the documents this
12 week. We are canceling that franchise agreement
13 in South Africa because of nonperformance, really.

14 Q. You cut off. Because it ...?

15 A. Because of nonperformance. They
16 didn't actually open a store.

17 Q. And when was the franchise
18 agreement originally signed -- approximately?

19 A. I think it was about two years ago.

20 Q. And have there been any other
21 franchise agreements in any other countries?

22 A. Not signed ones, no. No.

23 Q. In what other countries have you
24 actively negotiated franchise agreements?

25 A. Well, we had a letter of



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1 understanding -- which wasn't a formal document as
2 such in terms of it wasn't a contractual
3 document -- with a company called SSP, who at the
4 time were part of the Compass Group, who are
5 a large catering company, and SSP wanted to
6 franchise CRUSSH in airports around the world
7 because that was their specialty. It was
8 airports. I think they were the largest lessor of
9 airport space in the world.

10 Compass then sold SSP -- and we still
11 have this agreement -- and they tendered for
12 CRUSSH at Barcelona Airport, I think it was,
13 either late last year or earlier this year but we
14 didn't get it. But we still -- so they actually
15 went to the tender for the space at Barcelona
16 Airport but it wasn't chosen. But we still have
17 that arrangement with them whereby they tender us
18 as one of their brands.

19 Q. And part of the letter of
20 understanding was SSP or is it STT?

21 A. S for Sierra -- Sierra-Sierra-P.

22 Q. Do you know if their a plan in
23 terms of putting CRUSSH in airports throughout the
24 world included airports in the United States?

25 A. I assume so. I think they had -- I



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1 mean, I didn't specifically have that conversation
2 but I think they have airport space all over the
3 world, yes.

4 Q. So currently Krush Global doesn't
5 operate any business in the United States or have
6 any franchise agreements or letters of
7 understanding covering the United States, apart
8 from the SSP letter of understanding?

9 A. That's right. That's correct, yes.

10 Q. Looking at your trial declaration
11 again, in paragraph 6 in particular, where you
12 state at the end of that paragraph you say:

13 "CRUSSH sells healthy sandwiches,
14 salads, soups, wraps and organic, low-fat desserts
15 made daily."

16 A. Yes.

17 Q. Is that the full range of products
18 that CRUSSH offers --

19 A. Well, no. We have a lot of
20 products. I think that's a cross-section of them.
21 But, yes, it encompasses the basic range. I mean,
22 we do some sushi items which I suppose are not
23 covered there but we have a big -- I mean, on our
24 website there's a big menu which you can look at
25 which has the full range, but there's so many



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1 items I think it would be difficult to list them
2 all.

3 Q. Is the menu on your website, is
4 that a standard menu that is applicable across all
5 of the CRUSSH stores?

6 A. Yes, it's supposed to be although
7 there are some stores, I think, that have
8 a slightly limited menu because of their location.
9 I think specifically there's one in a sports
10 center that has a slightly restricted menu.

11 Q. So, for example, the sports
12 location restaurant menu would be more limited in
13 what manner? What kind of things would be --

14 A. Well, there wouldn't be so much
15 food because basically our core business is
16 breakfast and lunch to people going to work, you
17 know. Most of our stores are in office areas. So
18 our main source of income is people coming in on
19 their way to work and having their sort of
20 breakfast items and then people coming in at
21 lunch. Lunch is the biggest trading time.

22 Whereas in the sports center, it's not
23 in an office area, it's more in a residential
24 area; so we don't get the lunchtime flow of
25 people. It tends to be more afternoon/evening.



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1 So there's much less call for all the lunchtime
2 products.

3 Q. I'm going to ask the Court Reporter
4 to hand you the document that has a label B on it.
5 I would like to actually mark this as an exhibit
6 and we'll call it DP (for Dr. Pepper) 1.

7 (Exhibit DP/1 marked for identification.)

8 THE WITNESS: Hello?

9 BY MS. POPP-ROSENBERG

10 Q. Could you identify the document
11 that's been marked as DP/1 for us?

12 A. It's the menu front page from the
13 website -- from the CRUSSH website.

14 Q. And there's a number of categories
15 under drinks and food. Would you consider --
16 I guess is it an accurate representation of the
17 categories that the CRUSSH restaurants sell?

18 A. Yes.

19 Q. And there's no additional
20 categories you would put on here; is that right?

21 A. I wouldn't put any on, no.

22 Q. I think you mentioned that pretty
23 much the menu at all the CRUSSH locations is
24 standard except for some places that may have
25 a more limited menu. Are the stores allowed to



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1 expand the menu beyond what's seen on the website,
2 understanding that the menu changes from season to
3 season, et cetera?

4 A. Sorry, I didn't quite get that.
5 Could you say that again, sorry?

6 Q. What I'm asking is whether a
7 particular location of CRUSSH is able to add
8 things to the menu that aren't appearing on your
9 website menu and I say that knowing that your menu
10 probably changes from season to season or however
11 often it changes?

12 A. No, I mean, the store managers -- I
13 mean, the food is made centrally in our kitchens.
14 So we make all the food and they order that
15 depending on their needs for a particular item.
16 So I suppose if a manager had a store where they
17 sold masses of one particular item, they may order
18 more or less. But they can't just sort of go off
19 menu, I don't think, no. I'd be very surprised if
20 they did.

21 Q. I mean, we don't have the back-up,
22 the detailed menu in front of us yet, but not all
23 of the products that are sold in CRUSSH
24 restaurants are actually made at the central
25 kitchen or made on location. Is that right?



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1 A. No, that's right, no. Absolutely.

2 Q. Okay.

3 So in terms of these items that are
4 sourced from outside places/third parties, are
5 stores allowed to deviate from kind of what's seen
6 on the website in terms of the third party items?

7 A. No. No, they're not.

8 Q. Looking back again at your trial
9 declaration in paragraph 6, where the first
10 sentence says that:

11 "CRUSSH restaurants sell seasonal,
12 healthy food and beverages to health conscious
13 consumers."

14 A. Yes.

15 Q. How do you define "healthy food and
16 beverages"?

17 A. Gosh. Well, that's very difficult
18 but it's the ingredients should be considered to
19 be healthy. There's so many different
20 interpretations of "healthy" but we like to think
21 that we take the generally broad interpretation of
22 what is considered to be good and that the
23 ingredients are free from as many additives,
24 et cetera, as possible and we also try and serve
25 organic food where possible, but recently there



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1 been something -- organic has been told that it's
2 not necessarily as healthy as we thought.

3 So it's a very difficult question to
4 answer. But we take the generally accepted view
5 of what healthiness is and try and establish that
6 and put that into our menu.

7 Q. If I understood you -- and I'm not
8 sure I heard all the words, but basically all of
9 them -- that there's been, I guess, a situation
10 recently where some of the menu items have been
11 maybe not as healthy as you would have originally
12 preferred?

13 A. No, not recently. No, I don't
14 think so. No, I don't think so. Sorry, I think
15 you may have misheard me.

16 No, I was just saying that there was
17 a recent news broadcast in the U.K. about organic
18 food not being as healthy in terms of as opposed
19 to nonorganic as apparently we've all been led to
20 believe. Sorry, that's all I was saying. That's
21 why I was saying it's difficult sometimes to judge
22 what is healthy and what isn't healthy. But we
23 try to do organic and try to avoid additives and
24 all those things in our food.

25 Q. Thanks for that clarification.



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1 So would you consider the food -- you
2 say that everything on the Krush Global menu is
3 healthy?

4 A. No.

5 Q. So you do sell items that you would
6 consider not healthy?

7 A. We do, yes.

8 Q. What are those items?

9 A. Coca-Cola.

10 Q. Anything else?

11 A. Well, personally the snacks and
12 dessert range I would say that there's a little
13 too much of it but they all have healthy slants to
14 it. So they're either sugar-free or they're
15 wheat-free -- things like that. Those are the
16 main ones.

17 Q. Why do you not consider Coca-Cola
18 to be healthy?

19 A. Well, it's not a fresh juice which
20 is what we do, really -- fresh juice and smoothies
21 and fresh food. It's a canned, carbonated drink.

22 Q. I missed that last part.

23 A. Sorry. It's a canned, fizzy drink.

24 Q. Is Coca-Cola the only fizzy drink
25 that you offer at CRUSSH restaurants?



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1 A. I think -- I'm not completely and
2 utterly certain exactly what's on the shelves at
3 the moment but there are some -- there certainly
4 used to be some organic or there was an organic
5 cola and there was an organic lemonade and an
6 organic -- organic fruit drinks, basically, and
7 then there was some other sort of waters and
8 things that had added vitamins and minerals, sort
9 of grab-and-go bottles, which would have been
10 considered to have healthy connotations.

11 Q. Other than Coca-Cola and maybe the
12 organic colas, in terms of what originally I guess
13 you would call a soda or some people would call a
14 pop, are there any other -- have there ever been
15 any other of those categories of drinks for the
16 CRUSSH restaurants.

17 A. I can't remember specifically. I'm
18 sure there have been because they have changed
19 their -- you know, they've changed their ordering
20 on drinks depending on who their suppliers are,
21 et cetera, et cetera.

22 It's quite a small part of our business.
23 It's a sort of small area of the grab fridge and
24 I don't actually know which drinks have been in
25 there, but I know cola has been in there and



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1 I know these organic fruit drinks have been in
2 there and there are these mineral-y waters and
3 I can't specifically say what other ones have been
4 off the top of my head right now.

5 Q. Just to be clear, when we're
6 talking about Coca-Cola you offer both regular
7 Coca-Cola and Diet?

8 A. Yes, they have both, yes.

9 Q. When you're talking about healthy
10 food and beverages, would you classify food having
11 a high fat content as healthy?

12 A. No.

13 Q. Do you have any items on your menu
14 that have a high fat content?

15 A. I hope not. I'd be disappointed if
16 we did. I mean, for instance, the cheese -- which
17 would be considered to be high-fat -- they source
18 a low-fat cheese. So, as far as cheese goes,
19 I think we're catered for there.

20 MS. POPP-ROSENBERG: I would like to ask
21 the Court Reporter to pull up a document that's
22 been labeled E and we will mark that as DP/2.

23 (Exhibit DP/2 marked for
24 identification.)

25 THE WITNESS: DP/2: snacks and desserts.



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1 BY MS. POPP-ROSENBERG

2 Q. Do you agree that this is a
3 printout from the crussh.com website concerning
4 the nutritional information of the company snacks
5 and desserts?

6 A. Yes, it certainly looks like it. I
7 can't say I've actually seen this page before but
8 it certainly looks like it.

9 Q. And you will see across the top
10 that there's a bunch of columns with heading
11 titles and I would like you to particularly look
12 at the category that says "fat".

13 A. Yes.

14 Q. And I am not a nutrition expert but
15 some of these fat counts seem a little bit high to
16 me. Do you have any opinion on that?

17 A. No. No, I don't know what to
18 compare them to, to be honest.

19 Q. Okay.

20 For example, if you look at the organic
21 chocolate chip hazelnut cookies that has
22 25.8 grams of fat per 100 grams of product,
23 I guess. Does that strike you as high?

24 A. Sorry, the organic chocolate chip
25 cookie?



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1 Q. Mm-hm.

2 A. Again, I don't know. I don't know
3 what is high in terms of fat content.

4 Q. So when you said that you hoped you
5 didn't have any high fat product in the CRUSSH
6 product line, you don't actually know what makes
7 a high fat food?

8 A. Personally here now I don't, no,
9 but I assume that the managing director and our
10 chef look at these things quite carefully and
11 decide whether relatively these are low fat to the
12 alternatives. So I don't know whether a chocolate
13 chip cookie normally has three times that amount,
14 in which case this would be considered to be
15 a relatively healthy chocolate chip cookie. But,
16 as you've brought it to my attention, I may ask
17 them now.

18 Q. I understand the relativity
19 compared to a standard chocolate chip cookie and I
20 actually don't know whether this fat content is
21 high or low as compared to a standard chocolate
22 chip cookie, if there is one.

23 In the abstract, you don't know whether
24 this is a higher or low fat food in the abstract,
25 not compared to other chocolate chip cookies of



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1 the same type?

2 A. Well, given that it's a chocolate
3 chip cookie -- well, no, I don't know. I don't
4 know. But it sounds like -- looking at the
5 numbers here, it sounds like it's rather a lot
6 more than a wasabi pea.

7 But fat is not necessarily a bad thing
8 in small doses. I mean, again, the relativity
9 sort of comes into it. But I don't know
10 specifically, no.

11 MS. POPP-ROSENBERG: If the Court
12 Reporter could pull out the document that's been
13 marked as HH and we'll mark this as DP/3.

14 BY MS. POPP-ROSENBERG

15 Q. Mr. Learmond, if you could just let
16 me know when you have had a look at this.

17 A. Sure.

18 Q. Can you identify what has been
19 marked as DP/3?

20 A. The health pots menu.

21 Q. No. What I have marked as HH --

22 THE COURT REPORTER: Counsel, I misheard
23 you. I heard you say "AA". So you want "HH" --
24 hotel, hotel.

25 MS. POPP-ROSENBERG: Yes, hotel, hotel.



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1 Sorry about that.

2 (Exhibit DP/3 marked for
3 identification.)

4 THE WITNESS: Okay, coffee and hot
5 drinks.

6 BY MS. POPP-ROSENBERG

7 Q. And have you ever seen this
8 information before?

9 A. I'm sure I have, yes. Oh, hang on.
10 This is the energy information. Well, I'm sure
11 I have but I don't recall it particularly, the
12 nutritional information there.

13 Q. I will just represent for the
14 record that this is a printout from the crussh.com
15 website menu nutritional information for the
16 category of coffee and hot drinks.

17 Just again looking at the fat column
18 here for the variety of drinks here, some have
19 a very low-fat content: 0.2 for an organic
20 Americano, which I assume is a type of coffee. Is
21 that right?

22 A. Yes.

23 Q. And then some of them or at least
24 looking at organic latte which comparatively has
25 a high fat content of 11.2 grams; do you see that?



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1 A. Yes.

2 Q. What is in the organic latte?

3 A. Well, A latte has milk in it; so
4 the milk will be organic. It's a coffee made with
5 milk. But the Americano doesn't have milk in it.
6 So it's hot water with coffee beans.

7 Q. But they are both coffee options
8 being offered at CRUSSH restaurants; is that
9 correct?

10 A. That's right.

11 Q. Then relatively speaking in terms
12 of fat content, the organic latte is not as
13 healthy as the organic Americano; is that right?

14 A. That's right, yes. Well, it's
15 certainly got more fat in it, yes.

16 Q. Would you categorize an organic
17 latte as a healthy drink?

18 A. Well, yes. I mean, it's a coffee.
19 I don't drink coffee so I wouldn't have it myself.
20 But, as far as coffees go, I think this is
21 probably a healthy one because it has organic milk
22 in it and we consider organic milk to be a healthy
23 option.

24 Q. I'm actually not a coffee drinker
25 either but would you consider coffee in general to



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1 be a healthy drink?

2 A. Not in great quantities, no,
3 although there is some research on coffee that
4 suggests that it is. But personally I don't think
5 so, no.

6 Q. So the coffee category of products
7 that are being offered at CRUSSH restaurants you
8 would not consider healthy?

9 A. Relatively yes, but absolutely no.

10 Q. What about products with
11 preservatives in them? Would you consider those
12 to be healthy?

13 A. No, we would try and avoid those.

14 Q. Do you offer any products at CRUSSH
15 restaurants that have preservatives in them?

16 A. Coca-Cola I'm sure does but I don't
17 know of the other products exactly which ones have
18 100 percent not and some might do and, as I said,
19 the ethos is to avoid it. I don't know
20 specifically.

21 Q. But it's accurate to say that you
22 don't avoid products with preservatives completely
23 at CRUSSH restaurants?

24 A. That is accurate, yes.

25 Q. Just looking back again at



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1 paragraph 6 of your declaration and, again, the
2 sentence where you say that you sell your products
3 to health conscious consumers, how do you know
4 your customers are health conscious?

5 A. Gosh. Well, we don't. We don't
6 know that they're health conscious. We would hope
7 that they are.

8 Q. I'm sorry, did you say you "hope"
9 or you "think"?

10 A. No, no, we would hope they are
11 because that's what we're trying to offer, you
12 know, them that choice and some of them --
13 I suppose I've probably had a few emails from
14 people who are obviously very health conscious and
15 write in and say, "Thank you for providing me with
16 healthy options that I can't get anywhere else".
17 So some of them definitely are very health
18 conscious, yes, and have told us so but I couldn't
19 say it about all of them, no.

20 Q. Have you ever done a survey to see
21 what percentage of your customers are health
22 conscious?

23 A. I don't know. I haven't
24 personally -- not to my knowledge, no.

25 Q. Are people who aren't health



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1 conscious allowed to go into CRUSSH restaurants
2 and buy food and beverage?

3 A. Yes, they certainly are.

4 Q. Are you familiar with the basis of
5 the underlying proceeding here that is between
6 Dr. Pepper and Krush Global?

7 A. I'm not sure I understand exactly
8 what that question means but --

9 Q. Just generally do you have an idea
10 of what the conflict is between the two parties?

11 A. Well, I think so.

12 Q. I don't want to, you know, say what
13 the conflict is exactly about but basically at
14 issue are two -- well, one trademark application
15 and one trademark registration that Krush Global
16 has in the United States for the CRUSSH mark.
17 Does that sound vaguely familiar?

18 A. Yes. I mean, to put it briefly
19 I suppose, it seems to me that there seems to be
20 a conflict of over whether there would be some
21 confusion over our brand operating in the
22 United States with a brand that already exists
23 there.

24 Q. I'm focusing right now on the
25 application and the registration that are at issue



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1 in this proceeding and are you familiar with the
2 application and the registration?

3 A. In what ... I don't do them myself.
4 We have a trademark lawyer who does all the
5 applications and registrations.

6 Q. I guess among the documents that
7 were e-mailed to you, so they don't have
8 identifying marks on them, are two printouts from
9 the U.S. Patent and Trademark Office website.

10 A. Yes, we've got those. I brought
11 them in.

12 MS. POPP-ROSENBERG: If the Court
13 Reporter could mark the one that just has the word
14 "CRUSSH" without any kind of design element to it
15 as DP/4 and then the one with the design element
16 as DP/5.

17 (Exhibit DP/4 marked for identification.)

18 (Exhibit DP/5 marked for
19 identification.)

20 BY MS. POPP-ROSENBERG

21 Q. Mr. Learmond, just let me know when
22 you're ready to talk about them.

23 A. Yes, I'm ready.

24 Q. These are printouts from the U.S.
25 Patent and Trademark Office's website and I will



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1 represent that these are printouts of your Krush
2 Global trademark application.

3 So CRUSSH, just the word -- so this is
4 DP/4 -- this is an application and CRUSSH with the
5 logo on is a registration. If you could just look
6 at DP/4 currently and underneath where it says
7 "CRUSSH" in big letters, there is a category that
8 says "goods and services" and then there's a
9 recitation here of various services starting with:

10 "Restaurant catering snack bar and cafe
11 services..." et cetera.

12 Do you see that?

13 A. Yes.

14 Q. If you could just read that list to
15 yourself and let me know when you've read it.

16 A. Yes.

17 Q. In the description of services that
18 you intend to offer under the CRUSSH mark in the
19 United States is there's no limitation in here
20 about only serving healthy food or beverages, is
21 there?

22 A. No. Did you get that?

23 Q. No, sorry.

24 A. Sorry. I said "no".

25 Q. Is there any limitation in that



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1 description of services that you will only provide
2 these services to health conscious consumers?

3 A. No.

4 Q. If you could look at DP/5 which is
5 the CRUSSH mark with the logo and also if you
6 could read to yourself the goods and services list
7 on that document and let me know when you read it.

8 A. Yes.

9 Q. Now, on this list of services is
10 there any limitation that says that CRUSSH will
11 only offer healthy food or beverages?

12 A. No.

13 Q. And is there any limitation that
14 says that CRUSSH will only offer food or beverages
15 to health conscious consumers?

16 A. No.

17 Q. If you turn back to your trial
18 declaration looking particularly at paragraph 9
19 where you say, among other things, that:

20 "... today's business professional wants
21 more than a short lived energy burst from
22 a caffeine-rich jolts of java or a sugary soda."

23 Do you see that sentence?

24 A. Yes, I can see it.

25 Q. But CRUSSH restaurants sell both



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1 caffeine-rich jolts of java and sugary soda, don't
2 they?

3 A. Yes.

4 Q. And why do you sell those products
5 at CRUSSH restaurants?

6 A. For the people who do want those,
7 for the not so healthy people.

8 Q. In paragraph 9 you also say in the
9 last sentence that:

10 "Most of our customers are choosing
11 between a coffee or a smoothie: not a smoothie or
12 a soda."

13 Do you see that sentence?

14 A. Paragraph 9 ...

15 Q. I didn't hear you say yes.

16 A. Sorry, I'm just trying to look for
17 it. Paragraph 9 did you say?

18 Q. Paragraph 9, the very last
19 sentence?

20 A. Yes. Okay, I can see it now.

21 Q. Great.

22 Do you agree with that statement?

23 A. I think -- yes. I mean, most of
24 our healthy customers are choosing between a
25 coffee or a smoothie -- sorry, no, hang on. No,



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1 that's completely wrong.

2 "Most of our customers are choosing
3 between a coffee or a smoothie: not a smoothie or
4 a soda."

5 Yes, I do agree with that statement.

6 Q. And what is that statement based
7 on?

8 A. Well, that our sales of smoothies
9 are -- I mean, we hardly sell any sodas so our
10 sales of smoothies are very high.

11 Q. But isn't it true that you actually
12 hardly stock any sodas in your restaurants and you
13 --

14 A. Well, we have -- as I said, a
15 corner of the grab fridge has sodas in it, yes.

16 Q. But a lot of your store is
17 dedicated to, I guess, your juices or smoothies;
18 is that correct?

19 A. Yes. There's a big sort of
20 smoothie-making bar area where you can watch your
21 drink being made.

22 Q. So you've never actually done
23 a survey of your customers to see if they are
24 coming in to choose between a coffee or a smoothie
25 or a smoothie versus a soda?



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1 A. I'm not aware of one myself, no.
2 The managing director may have commissioned one
3 without telling me but I'm not aware of one, no.

4 Q. I would like to turn to
5 paragraph 10 of your declaration.

6 A. Yes.

7 Q. And in the second sentence it says:

8 "CRUSSH has always strongly believed in
9 avoiding additives, preservatives, salts and
10 sugars in their food and drink ..."

11 Do you see that sentence?

12 A. Yes, I can.

13 Q. But we've already established that
14 CRUSSH does sell products with preservatives in
15 it, true?

16 A. Yes.

17 Q. And does CRUSSH also sell products
18 with additives in them?

19 A. Well, it's a very difficult
20 question to answer this. The food that we make,
21 i.e. the juice and the smoothies that we make,
22 don't have additives or preservatives because they
23 are simply made from fruit. So that in itself
24 must mean there are no additives. If you put an
25 apple into the blender, it comes out as apple



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1 juice and we don't add anything to that.

2 The smoothies we add an organic yogurt
3 to. Now, that yogurt is a pure-made yogurt so it
4 has no bad additives or preservatives but in the
5 process of making yogurt, from what I understand,
6 you add some sort of bacteria. So I suppose that
7 could be considered an additive.

8 So the food that we make we don't put
9 additives -- the drinks that we make we don't put
10 additives and preservatives in, no. But some of
11 the other products do have them in them, yes.
12 I don't specifically know which ones do and which
13 don't but the drinks it's fairly obvious if you
14 get an apple juice or a carrot juice you're
15 getting the juice from an apple and the juice from
16 a carrot and nothing else put into it.

17 Q. For 2008 approximately what
18 percentage of your sales were juices/smoothies and
19 what percentage of sales were other products? Do
20 you have that breakdown?

21 A. Yes. Well, I don't have it
22 specifically again but when I have asked that in
23 meetings and stuff, I've usually been told or
24 always been told it's about 50/50.

25 Q. Okay.



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1 So going back to paragraph 10 then with
2 regard to salt, does CRUSSH sell products with
3 salt in them?

4 A. I'm sure salt -- yes, there are
5 salts in them but, to give an example, in our
6 bread we use far less salt than you would get in
7 a normal bread. So we actually commission the
8 bread-maker to use less salt than in normal bread.
9 But, yes, there will salt in products but, you
10 know, it's the amounts that are in there that
11 we're trying to, you know, keep low.

12 Q. And then also CRUSSH sells products
13 with sugar in them; is that correct?

14 A. Well, I mean fruit has sugar in it,
15 yes. I mean, you can't get away from sugar. It's
16 sort of --

17 Q. Coca-Cola has sugar in it.

18 A. Coke has added sugar in it; yes, it
19 does, I think. Well, it must do.

20 Q. Turning to paragraph 11 in your
21 declaration, the first sentence says:

22 "CRUSSH are made to order."

23 Do you see that?

24 A. "CRUSSH products are made to
25 order" -- yes.



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1 Q. Is that statement true?

2 A. Well, no, not all our products are
3 made to order. The products that we make are made
4 to order -- the drinks, basically.

5 Q. But even the other products that
6 you make, for example, your sandwiches, et cetera,
7 you say are made in the central kitchen?

8 A. No, they are not made to order.
9 That is slightly misleading, I agree. The drinks
10 are made to order. Our drinks are made to order.

11 Q. And you're talking about the juices
12 and the --

13 A. Juices and smoothies.

14 Q. And I guess maybe the coffee too?

15 A. Yes.

16 Q. Also in paragraph 11 in the next
17 sentence it says:

18 "CRUSSH does not sell smoothie beverages
19 in third party retail stores or third party
20 restaurants since, when packaged the goods would
21 need to ..."

22 I will add the word "be".

23 A. "... to be pasteurized", yes.

24 Q. And then:

25 "Applicant does not believe in



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1 pasteurization."

2 Do you see that?

3 A. Yes. We don't pasteurize our
4 drinks, our juices and smoothies, no.

5 Q. And is it true that you don't sell
6 food and beverages in third party retail stores or
7 restaurants?

8 A. No. They wouldn't travel, no.

9 Q. Do you sell any of your products in
10 third party retail stores or restaurants?

11 A. We have done. In the past, we've
12 made sandwiches for other people. We've made
13 salads for other people but I do not believe that
14 we do them now, no.

15 Q. When you say you have made
16 sandwiches and salads for other people, are you
17 talking about catering or are you talking about
18 selling them in actual other retail
19 establishments?

20 A. No. I think a very long time ago,
21 right at the beginning, there was one other juice
22 bar that we supplied with food. They were called
23 Squeeze, and we ended up buying them in the end,
24 but they didn't have a food range and they asked
25 us to supply them with food so we did supply them.



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1 They bought the product off us and sold it in
2 their stores.

3 Q. When they sold the product in their
4 stores, was it labeled a CRUSSH product or it just
5 happened to be a sandwich that came out of your
6 central kitchen and they labeled Squeeze?

7 A. I really can't remember but I can't
8 believe they had "CRUSSH" on it, no.

9 Q. Has CRUSSH ever had plans to sell
10 packaged smoothies in third party locations?

11 A. Well, no. I mean, I wouldn't. We
12 have been approached by several people over the
13 years saying, "Don't you think this would be
14 a logical step with your brand" but we haven't
15 done it.

16 Q. Have you been interested in doing
17 it?

18 A. Personally, no. I'm not interested
19 in doing it, no. But, you know, we have been
20 approached by people.

21 Q. I would like you to, I guess, look
22 at another document that I sent, the article
23 entitled:

24 "James Learmond: The juice bar founder
25 who wouldn't be crushed."



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1 A. Yes.

2 Q. If we could mark that as DP/6.

3 A. That's that one.

4 (Exhibit DP/6 marked for identification.)

5 Q. Mr. Learmond, let me know when
6 you're ready to talk about the document.

7 A. Sure.

8 Q. I will represent that this is
9 a printout from the website guardian.co.uk.

10 A. Yes.

11 Q. It appears to be an article that
12 was published about you, I guess, it looks like in
13 September of 2006?

14 A. Yes.

15 Q. Have you ever seen this article
16 before, even if you didn't see it in this form?

17 A. Yes, I have.

18 Q. So this is in fact an article about
19 you?

20 A. It was, yes. It is.

21 Q. You recall being interviewed for
22 this article; is that right?

23 A. I do, yes.

24 Q. I would like to look at page 2 of
25 the printout.



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1 A. Yes.

2 Q. The third full paragraph:

3 "This is week, CRUSSH opened
4 a 15th ..."?

5 A. "This week ..."

6 Oh, okay, yes, yes.

7 Q. So at the end of that paragraph it
8 says:

9 "Further ahead, there are plans for
10 CRUSSH bars in other big cities, airports and
11 railway stations as well as a possible venture
12 into bottled smoothies."

13 Can you see that?

14 A. Yes, I can.

15 Q. Do you recall discussing bottled
16 smoothies during the interview?

17 A. I don't recall that, no, but I can
18 see it here.

19 Q. Do you think the person who wrote
20 the article made it up?

21 A. No, I don't think she did but
22 I don't recall it specifically, no.

23 Q. Do you think is it possible that
24 you spoke with the interviewer about possibly
25 going into --



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1 A. Yes, absolutely because it was
2 about then that we were approached by quite a big
3 company of the possibility of doing this and we
4 decided not to do it. I mean, for the purpose of
5 this article, I probably mentioned it because it
6 makes the company look a little bit more
7 attractive in terms of its potential. But
8 whatever happened to that deal it sort of went
9 away. So we didn't do it. We chose not to do it.

10 Q. I just want to see if I understand
11 it. Is it that your board are opposed to offering
12 bottled smoothies or it's just that it's not the
13 right, I guess, business for you to go into right
14 now?

15 A. For me personally I don't want to
16 do it.

17 Q. But are you the sole decision-maker
18 for Krush Global?

19 A. No, I'm not.

20 Q. So it's possible that other people
21 could make the decision to go into bottled
22 smoothies and your personal preferences would have
23 no affect on that?

24 A. That is correct, yes.

25 Q. So you can't say that Krush Global



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1 has no interest in going into bottled smoothies?

2 A. At present I can say that. Right
3 now, at this moment, we don't have any intention
4 but I can't say that will always be the case, no.
5 I know that we're not talking about it at the
6 moment or that nobody has approached us recently
7 to do it and we have no intention of looking for
8 somebody at the moment.

9 Q. But it's true that if someone came
10 with you with a business proposition to sell
11 bottled smoothies and for whatever reason the
12 company decided it was a good business
13 proposition, the business then might do it?

14 A. Well, the reason it didn't go to
15 fruition last time was that we decided that it was
16 not really what our brand was about and it would
17 be very difficult to ... what's the word? It
18 would be difficult to include it in what we do
19 with our juice bars so we decided not to go ahead
20 with it.

21 Q. When you say that you decided it
22 wasn't really what the brand was about, is that
23 because the brand was focused on running its own
24 restaurant locations as opposed to creating kind
25 of a package design or was there some other --



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1 A. Yes, that's basically the reason.

2 Q. So the reason was you were running
3 these restaurants, not creating a food line --

4 A. Well, we were running restaurants
5 and bottled drinks slightly fly in the face of our
6 main, our core product, if you like, our core
7 product being freshly made juice and smoothies
8 made to order and that's our core product and it
9 doesn't fit so well with that.

10 I remember there being a discussion at
11 a board meeting and everyone saying, "Well, why
12 does this fit with what we do?" You know, there
13 were other voices who go down the line of, "Oh,
14 it's a potential money-making activity" but the
15 overall view was that it didn't fit with what we
16 did.

17 Q. Are there other fresh juice bar
18 smoothie-type of operations in the U.K. other than
19 CRUSSH?

20 A. There are. Yes, there are.

21 Q. Do any of those other operations
22 sell bottled smoothies or bottled juices?

23 A. I don't know.

24 Q. Now, turning back to your trial
25 declaration and paragraph 15 where you say:



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2 CRUSSH logo (see below) was registered in the U.K.
3 as well as other EU countries to simplify
4 printing."

5 Do you see that?

6 A. Yes. Sorry, which paragraph?

7 Q. Paragraph 15 of your trial
8 declaration.

9 A. 15 ...

10 Q. Do you see that paragraph?

11 A. Sorry, that page seems to have
12 jumped away. Hold on. No, I can't find it. I'm
13 just going to put the telephone down for a second.

14 MR. DRANGEL: We're talking about the
15 declaration, James.

16 A. Yes, I'm looking for it. I just
17 can't find -- I've got the declaration. I just
18 can't find paragraph 15.

19 BY MS. POPP-ROSENBERG

20 Q. It's on page 3.

21 A. I don't know where it's gone.
22 Okay, we've found it.

23 Q. So you see paragraph 15 where you
24 talk about registering the CRUSSH logo in other EU
25 countries, correct?



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1 A. Yes.

2 Q. Do you know what other EU countries
3 the CRUSSH logo is registered in?

4 A. Not off the top of my head I don't.
5 I think there's a thing called ... is it a CTM?

6 Q. Yes.

7 A. All of this stuff is handled by
8 a company here in the U.K. and they have all that
9 information. But I don't know specifically which
10 countries that includes and doesn't include, no.

11 Q. Do you know whether -- well, you
12 were correct that you have a CTM registration. Do
13 you know whether your CTM registration for your
14 CRUSSH mark ran into any problems in the
15 registration period with another company opposing
16 it?

17 A. Yes, I'm sure there was. I can't
18 remember the specifics. I wouldn't have been told
19 the specifics, I don't think, but I think there
20 were -- oh, yes there was Love Juice. Oh no, that
21 was something else, sorry.

22 There was one in Austria that we -- no,
23 that was us appealing against them. I don't know,
24 I don't know. I can't remember. I can't remember
25 specifically who objected or what the objections



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1 were.

2 Q. Do you recall whether a company
3 called Cadbury Beverages DB?

4 A. Yes. Now you say Cadburys, I do
5 remember them being mentioned. Yes, I do.

6 Q. Do you know what the basis of
7 Cadbury Beverages DB's objection was?

8 A. No.

9 Q. You don't know?

10 A. Well, no I don't, no. I presume
11 something to do with CRUSSH.

12 Q. Why do you presume that?

13 A. Because that's what we're talking
14 about. Anyway, I diverge.

15 Q. We have been talking about CRUSSH
16 during this whole deposition and would you agree
17 that we're both pronouncing the word roughly the
18 same?

19 A. Yes.

20 Q. With an American accent?

21 A. Yes.

22 Q. But your CRUSSH mark has two Ss in
23 it; is that correct?

24 A. Yes.

25 Q. That's different from the common



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1 word "crush" that we know as the dictionary word
2 that just has one S in it, correct?

3 A. Yes.

4 Q. I mean, I have been pronouncing the
5 word the same. I pronounce the word "CRUSSH" the
6 same way I pronounce the common word "crush" and
7 it seems to me that you have been pronouncing your
8 mark "CRUSSH" the same way that you pronounce the
9 normal word "crush"; is that correct?

10 A. Yes. Did you get that? Yes.

11 Q. So the fact that your CRUSSH mark
12 has two Ss in it doesn't really affect the
13 pronunciation; is that right?

14 A. Not on the surface of it, no. It
15 can sometimes. When people are messing about,
16 they elongate it.

17 Q. But only when they're messing
18 about?

19 A. Well, you know, people come
20 in sometimes and go "crusssh" but I don't know. I
21 don't know when people do it but it has been known
22 to be elongated, yes.

23 Q. When has it been known to be
24 elongated?

25 A. Well, I've heard people use it.



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1 Certainly in our office, it is quite often used as
2 a sort of --

3 Q. Sorry, could you just repeat that?

4 A. Certainly in our office it is quite
5 often used as a sort of joke to elongate it, play
6 around with it. When you're talking about other
7 words as well we do it with "crusssh" and then you
8 go, "Are you going to have luncccch?" Something
9 like that anyway.

10 Q. Right, I understand. So elongating
11 the double S in the CRUSSH name is more of a joke
12 than a common standard pronunciation that you
13 would use with --

14 A. I think that's probably -- I don't
15 know if it's a joke but it's something we play
16 around with and I think most people would call it
17 CRUSSH, yes.

18 Q. So you don't do any advertisements
19 or your restaurants don't encourage consumers to
20 elongate the S or the SH sound, do you?

21 A. No, we don't -- no, actually
22 I think we do. I think you'll find on the website
23 there's "in a russh go to CRUSSH." So that's
24 something on our website that uses it, yes.

25 Q. Is that something you can click on



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1 and listen to someone saying that --

2 A. No, no, it's written. So it's
3 written with lots of Ss. And some press articles
4 have picked up on that obviously.

5 Q. Let's go back to your trial
6 declaration and paragraph 16. At the very end, it
7 says:

8 "The CRUSSH logo is a fanciful mark
9 having a playful look and sound with the letters
10 appearing in all caps."

11 Do you see that?

12 A. Yes.

13 Q. I understand that in the logo
14 format of your CRUSSH mark that the letters are in
15 all caps but when you use your CRUSSH mark
16 generally does it always appear in all caps?

17 A. Gosh, I don't know. I haven't ever
18 really thought about it.

19 Q. Have you ever seen your CRUSSH mark
20 where the initial letter C is capitalized but the
21 other letters are in lower case?

22 A. Oh, yes, yes. I have.

23 Q. Now I'd like you to turn to the
24 next page of your declaration, paragraph 17.

25 A. 17. I'm a little muddled here.



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1 Okay, yes.

2 Q. The first sentence says:

3 "We selected the term 'crush' because it
4 has a number of different meanings."

5 Do you see that sentence?

6 A. Yes.

7 Q. When you say "we" in that sentence,
8 are you referring to Krush Global in the sense of
9 the "royal we" or are you referring to individual
10 people?

11 A. We hired a branding and design
12 consultant at the beginning. There was an
13 architect. I can't even remember his name.
14 Richard Hywel Evans I think he was called. He
15 brought in a brand consultant who was called Julia
16 and the whole name and look was put forward by
17 them at meetings and things. So the "we" is the
18 founders and the brand consultants and the
19 architects and everyone sort of, you know, during
20 presentations sort of came to that, yes.

21 Q. So was it a brand consultant that
22 actually came up with the CRUSSH initially?

23 A. Yes. Well, she came up with
24 a whole range of ideas, but yes.

25 Q. And then presumably you and your



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1 partners made the decision as to which name to go
2 ahead with?

3 A. Yes. We all sat round and it was
4 looked at the advantages and disadvantages of each
5 one and decided on that one.

6 Q. Do you remember what some of the
7 other names were that you considered?

8 A. I really can't remember but I'm
9 sure they were all fairly obvious ones to do with
10 squeezing and crushing and mixing and whizzing,
11 things like that.

12 Q. When the brand consultant offered
13 "CRUSSH" as one of the potential names for the
14 business, did he offer it -- I mean, was it his
15 idea to have the double S or whose idea was that?

16 A. No, I think it was my idea to put
17 the double S in because they were trying to look
18 for something more distinctive from the word as it
19 stood.

20 Q. And why were you trying to look for
21 something more distinctive?

22 A. Because we wanted a brand that
23 would stand out and that would be remembered and
24 be distinctive, a distinctive mark.

25 Q. Sorry, you believed that the double



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1 S would make your brand stand out?

2 A. Yes, we did.

3 Q. I would like you to look back at
4 the Guardian article that we marked as DP/6 and
5 turn to page 4 of that document. The first full
6 paragraph there says:

7 "One of the founders, James Deen ..."
8 et cetera?

9 A. Yes.

10 Q. At the end of that paragraph, it
11 says:

12 "... Learmond, who himself claims credit
13 for the confusing double 's' in the name -- to
14 differentiate the company from another with
15 a similar trademark."

16 A. Yes.

17 Q. Do you recall whether this company
18 with a similar trademark -- do you know which
19 company that was?

20 A. No. We were told at the time that
21 the "crush" was confusing as a single word and
22 I don't recall anybody mentioning any names of
23 specific companies. They just said it wouldn't be
24 distinctive with one S.

25 Q. So you don't recall that there was



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1 another particular company with --

2 A. No, I think there were quite a lot
3 of companies called "crush". I really can't
4 remember but I don't remember a specific one, no.

5 Q. If we look back at your declaration
6 at paragraph 22, it starts:

7 "Given the common usage of the term ..."

8 And I take it we're talking about the
9 term "crush"?

10 A. Sure.

11 Q. C-R-U-S-H. It says:

12 "... fruit related drinks and the
13 mechanisms to make them, we wanted our crush name
14 to have more distinction in sound and appearance.
15 So we decided to add an S to CRUS_H ..."

16 A. Yes.

17 Q. So is this statement in
18 paragraph 22 accurate that you added the S because
19 crush without an S had, I guess, a common usage
20 for fruit-related drinks and mechanisms to make
21 them? Is that accurate?

22 A. Sorry, I don't quite understand
23 that question.

24 Q. I guess I'm asking if the first
25 paragraph or if the whole paragraph 22 is



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1 accurate?

2 A. Yes, I think so:

3 "Given the common usage ... we decided
4 to add an S to CRUS_H -- resulting in a trademark
5 with a different appearance and sound."

6 Absolutely, yes. That's what we were
7 trying to do.

8 Q. So the S was added according to
9 paragraph 22, if I'm reading it the right way,
10 because crush without a double S was in common
11 usage for fruit-related drinks and the mechanisms
12 to make them?

13 A. Well, I think it just wasn't
14 considered to be a strong sort of brand and it
15 would be confusing, yes.

16 Q. So in the U.K. if there were
17 another company that had existed before you
18 started your CRUSSH restaurant that called their
19 restaurants "Crush" with a single S, would you
20 have adopted your CRUSSH trademark with a double S
21 because you considered the double S to distinguish
22 yourself from the other company?

23 A. I don't know. I mean, it --
24 I don't know. It didn't happen like that but
25 I haven't really thought about it.



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1 If there was another chain of juice bars
2 called "Crush" we would not do it, no. I think
3 that would be very unlikely. If there was
4 a single restaurant called "Crush" somewhere
5 geographically far, far away we might have done
6 but we didn't have that knowledge at the time.
7 There was nothing called CRUSSH. We were trying
8 to build a very distinct separate brand.

9 Q. But if there were other juice bars
10 with "Crush" with a single S you would not have
11 adopted CRUSSH with the double S --

12 A. I don't think so, no. I personally
13 wouldn't but, I mean, it would seem a silly thing
14 to do but there you go.

15 Q. Sorry, I didn't hear that end of
16 that. It would seem ...?

17 A. It would seem a silly thing to do
18 if there was already an existing load of juice
19 bars called "Crush" to call another one "Crussh".

20 Q. Now I would like to just talk about
21 some of the exhibits to your declaration. I think
22 you said before that you didn't put together the
23 exhibits. Is that right?

24 A. Yes, that's right.

25 Q. If you answered, we didn't hear



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1 you.

2 A. Sorry. That's right, yes.

3 Q. So let us look if you would, if you
4 could look with me at the exhibit attached to your
5 declaration marked exhibit 3. It is headed at the
6 top:

7 "Crush -- definitions from
8 Dictionary.com."

9 Can you identify exhibit 3 for me?

10 A. It says a dictionary of
11 definitions. Definitions from Dictionary.com.

12 Q. So you would say that this is a
13 printout from Dictionary.com; is that correct?

14 A. Yes. It appears to be, yes.

15 Q. Did you actually go to the
16 Dictionary.com website and print out this page?

17 A. I don't think so. I don't
18 remember. But, no, I don't think so.

19 Q. Have you ever gone to the
20 Dictionary.com website and typed in the word
21 "crush" and seen what's come up?

22 A. I don't know. I don't know.
23 I can't remember whether I did or Jason did.
24 I presumably at some point put it in when all this
25 came up to see what came up.



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1 Q. Do you personally know whether
2 exhibit 3 is an accurate printout, that it
3 accurately represents the information on the
4 Dictionary.com website?

5 A. I have no idea. No, I don't know.

6 Q. Let's turn to exhibit 4. Let me
7 know when you are ready.

8 A. Exhibit 4 ... yes.

9 Q. Can you just identify what's in
10 your declaration as exhibit 4?

11 A. "Definition of fruit crush by Free
12 Online Dictionary, Thesaurus and ..."
13 encyclopedia, presumably.

14 Q. And this page also appears to be an
15 Internet printout; is that correct?

16 A. Yes.

17 Q. If you answered, we didn't hear it
18 over here.

19 A. Yes.

20 Q. Did you yourself print out this
21 page that's been marked as exhibit 4 of your
22 declaration?

23 A. No, I don't think so. Again,
24 I can't remember who printed these out.

25 Q. Do you personally know whether the



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1 printout that's exhibit 4 is an accurate
2 representation of the information on the Free
3 Dictionary website?

4 A. I don't know, no.

5 Q. Now, if we could skip to exhibit 6
6 of your declaration and let me know when you're
7 ready.

8 A. Yes.

9 Q. To me, these appear to be printouts
10 from several different websites. Would you agree?

11 A. Yes.

12 Q. Did you actually these print out
13 what are attached as exhibit 6 yourself?

14 A. No.

15 Q. Did you go to any of these websites
16 and confirm that the information in these
17 printouts is an accurate representation of the
18 website?

19 A. Yes, I think I went to the website,
20 yes. Sorry, I thought you were saying whether
21 I actually printed them out.

22 Q. That was my first question.

23 A. Okay. No, I didn't actually print
24 them out but I think I went to the websites and
25 looked at them, yes, to see what they said on



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1 crush.

2 Q. Which websites did you go to?

3 A. Well, I assume these ones but
4 I can't specifically remember.

5 Q. Do you have a recollection that
6 you -- well, let us look at the first page that
7 you went to. Well, first of all, do you know what
8 website this is that's represented in the first
9 pages of exhibit 6?

10 A. What, the cocktail one?

11 Q. The cocktail: UK.

12 A. Yes.

13 Q. What website is it?

14 A. It says: "Cocktail: UK" at the
15 top.

16 Q. Sorry, go ahead.

17 A. It says "Cocktail: UK."

18 Q. Do you know what the website
19 address is?

20 A. No.

21 Q. Skipping to the next printout that
22 has the words Blueberry Crush on it.

23 A. So the next one.

24 Q. Yes. Well, it's the third page
25 into exhibit 6. It says Blueberry Crush.



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1 A. Blueberry Crush, yes.

2 Q. Do you know what website this
3 printout is from?

4 A. I don't, no.

5 Q. Turning to the Grapefruit Crush
6 recipe, do you see that page?

7 A. Yes, I do.

8 Q. Do you know what website that's
9 from?

10 A. No, I don't.

11 Q. Turning to the following page, that
12 is a Grape Crush drink recipe. Do you know what
13 website that is from?

14 A. I don't, no.

15 Q. Let us turn now to exhibit 7 and
16 let me know when you are ready?

17 A. Yes.

18 Q. Can you tell me what exhibit 7 is?

19 A. Crush drink blenders. Blenders
20 from BizRate:

21 "Compare prices, reviews & buy --
22 price -- review."

23 Q. Would you agree that this appears
24 to be an Internet printout?

25 A. Yes, it is I think.



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1 Q. Did you make this Internet printout
2 yourself?

3 A. No.

4 Q. We didn't hear you if you answered.

5 A. Sorry. No.

6 Q. Do you personally know whether this
7 printout is an accurate representation of what's
8 on -- I don't know -- whatever website this is?

9 A. No.

10 Q. If we turn back to exhibit 3, and
11 let me know when you're ready?

12 A. Okay.

13 Q. Looking at the first page of
14 exhibit 3 -- and I think you said before these are
15 entries from the Dictionary.com website -- the
16 first one that I see says "Dictionary.com
17 Unabridged". Do you see that on first page of
18 exhibit 3?

19 A. At the top?

20 Q. Kind of one-third the way down the
21 page where it says "Dictionary.com Unabridged."

22 A. Yes.

23 Q. I assume you're familiar with
24 dictionary entries. They talk about words in
25 different forms; so in this case there's "verb



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1 (used with object)" and, skipping down, there's
2 "verb (used without object)" and, skipping down,
3 it says "noun". Do you see that?

4 A. Yes.

5 Q. Do you see anything under the noun
6 section that refers to any kind of beverage or
7 drink?

8 A. "The act of crushing ..." No.

9 Q. Then if you could turn to, I guess,
10 the third page of exhibit 3 that has "crush" at
11 the top and right underneath it it says "noun".
12 Do you see that?

13 A. Yes.

14 Q. In that section do you see any
15 definition for crush that references any type of
16 beverage or drink?

17 A. No.

18 Q. Would you agree that there are at
19 least two sources in this Dictionary.com printout
20 that don't refer to crush meaning a drink or
21 a beverage?

22 A. Yes, in America by the certain
23 looks of it, yes.

24 Q. In paragraph 18 of your declaration
25 you say that:



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1 "Fruit crush is defined as 'a drink
2 produced by squeezing or crushing fruit.'"

3 Then you reference exhibit 4. Do you
4 personally ever use the term fruit crush?

5 A. Yes, it's used as a sort of summer
6 drink. So if you were going to make a lemon and
7 ice drink at home, you'd call it a fruit crush,
8 yes. I would.

9 Q. So fruit crush is a phrase that's
10 in common usage in the U.K.?

11 A. I don't know about common usage but
12 it is ...

13 Q. But you use it anyway?

14 A. I would use it, yes -- a fruit
15 crush, yes. So you'd say "I'll have a lemon
16 crush" or a "strawberry crush" or something like
17 that.

18 Q. And you said that you don't know
19 whether the term is in common usage in the U.K.;
20 is that correct?

21 A. I don't know, no.

22 Q. Do you believe it's in common usage
23 in the U.K.?

24 A. I don't know.

25 Q. What about in the United States?



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1 Do you know if people use that phrase in the U.S.?

2 A. I have no idea.

3 Q. Have you ever heard an American use
4 the term "fruit crush"?

5 A. No.

6 Q. Anywhere else?

7 A. I haven't been to America very
8 often. No, not that I can recall, no.

9 Q. So, as far as you know, fruit crush
10 is not a common phrase in the U.S.?

11 A. No. As far as I know it's not, no.
12 I don't know. I don't know.

13 Q. In paragraph 20 of your declaration
14 you state:

15 "There are many examples of 'crush'
16 drink recipes for cocktails with recipe names like
17 Grape Crush Drink or Grape Crush, Blueberry Crush,
18 Grapefruit Crush Drink, among others."

19 A. Yes.

20 Q. And then you say:

21 "See examples attached what as
22 exhibit 6" which we looked at?

23 A. Yes.

24 Q. Before you read this declaration
25 that has been drafted for you, had you ever heard



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1 of any of these cocktails: Grape Crush Drink,
2 Grape Crush, Blueberry Crush or Grapefruit Crush
3 Drink?

4 A. Not in that format, no. No, no,
5 I haven't. I mean, I have heard of drinks called
6 something crush -- a fruit and then a crush --
7 before, yes, many times but not specifically those
8 ones on that piece of paper, no.

9 Q. Did you ever see these drinks,
10 these cocktails, that are referenced in
11 paragraph 20 on menus in the U.K.?

12 A. I think you get them more in
13 supermarkets.

14 Q. How do you mean you get them more
15 in supermarkets?

16 A. Well, I think you'll find that they
17 -- I think the last time I saw it would be,
18 I think, a Grapefruit Crush. I can't remember
19 which supermarket it was in but they'll have
20 a product, a fresh fruit juice product, called
21 a Grapefruit Crush or something on the shelves.
22 That's the last time I saw it that I can remember
23 specifically.

24 Q. Most of your juices and smoothies
25 that you sell in your restaurants don't have



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1 "crush" in their name; is that correct?

2 A. Yes, that is correct.

3 Q. Do you know whether --

4 A. I think there's one.

5 Q. -- the recipes shown in exhibit 6

6 are recipes that are used anywhere or shown

7 anywhere other than the website that you collected

8 in exhibit 6?

9 A. In exhibit 6? No, not
10 specifically, no. No.

11 Q. Are you aware that the websites
12 that are represented in exhibit 6 allow
13 individuals to submit their own drink recipes?

14 A. No, I wasn't.

15 Q. So you don't know whether these are
16 recipes that are on the website for exhibit 6 were
17 submitted by some random individual or whether
18 these are kind of collective recipes that everyone
19 knows about? Is that right?

20 A. Yes. I have no idea, no.
21 Although, looking at it, it looks like there's
22 a comment on it.

23 Q. Which one are you talking about?

24 A. There's a comment at the bottom
25 saying:



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1 "This cocktail is refreshing and wakes
2 you up in the morning."

3 Q. You're talking about the first page
4 of exhibit 6?

5 A. Yes.

6 Q. And that's just one individual
7 comment?

8 A. It looks like it, yes.

9 MR. DRANGEL: We have been going for two
10 hours. Do you want to take a five-minute break?

11 THE WITNESS: I might go to the loo if
12 that's all right.

13 MS. POPP-ROSENBERG: Let's take
14 a five-minute break.

15 THE WITNESS: Do we keep the telephone
16 running or do I ring back?

17 MS. POPP-ROSENBERG: You can leave it
18 on; that's fine.

19 (2:58 p.m.)

20 (Break taken.)

21 (3:05 p.m.)

22 MS. POPP-ROSENBERG: Miss Ford, if you
23 could just read the last question and answer so I
24 remember where we were.

25 (Record read.)



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1 BY MS. POPP-ROSENBERG

2 Q. If you could look at exhibit 6 and
3 turn to the third page of that exhibit which has
4 the bearing CRUSSH on it and let me know when you
5 are ready.

6 A. Yes.

7 Q. Do you see at the bottom of that
8 page, the bottom right-hand corner, it says:

9 "Contributor. This drink recipe was
10 submitted by one of our eerily charismatic
11 readers, Goodebuzz."

12 Do you see that?

13 A. I do, yes.

14 Q. So at least the information on this
15 page suggests that this Blueberry Crush recipe was
16 submitted by one of the readers of the website; is
17 that correct?

18 A. Yes.

19 Q. If you can turn to the second to
20 last page in exhibit 6 which has "Grape Crush
21 Drink Recipe" and a number 1 kind of in that
22 advertizing; do you see that?

23 A. Yes.

24 Q. In the middle of the page it says
25 "Grape Crush Drink Recipe" and then it has some



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1 boxes and then it says:

2 "Recipe: 91% of 240 votes."

3 Do you see that?

4 A. Yes.

5 Q. Would you agree that this is saying
6 that 240 people or someone has voted for this
7 drink? Is that how you read it?

8 A. 91 percent of 240 votes. I suppose
9 so, yes.

10 MS. POPP-ROSENBERG: If the Court
11 Reporter could pull out the exhibit entry number
12 that's been marked "O" for orange. Could we mark
13 that as DP/7, if that is the right number.

14 (Exhibit DP/7 marked for identification.)

15 THE WITNESS: Hello? Yes, ready.

16 BY MS. POPP-ROSENBERG

17 Q. I will represent to you this is a
18 printout from the idrink.com website which is the
19 same website as the Grape Crush recipe that we
20 were just looking at from exhibit 6 and this is in
21 reference to a drink called Sex on the Beach.

22 A. Right.

23 Q. You will see under where it says
24 "Sex on the Beach" in roughly the middle of the
25 page and it has boxes and it says:



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1 "Recipe rating: 91% (of 12683 votes)."

2 Do you see that?

3 A. Yes.

4 Q. So, based on this information, it
5 seems that comparatively there is a lot more
6 people who have voted on the Sex on the Beach
7 drink recipe than the Grape Crush drink recipe?

8 A. It does.

9 Q. So, relatively speaking at least as
10 compared to the Sex on the Beach drink recipe,
11 there's very few people who have voted on the
12 Grape Crush drink recipe, correct?

13 A. Correct.

14 Q. If you could turn to paragraph 21
15 of your declaration:

16 "Some Blenders sold to make smoothies
17 are also referred to as 'crush drink blenders'" in
18 quotation marks?

19 A. Yes.

20 Q. Have you ever heard of a blender
21 category or a name called Crush Drink Blenders
22 before?

23 A. No. Only on that website, yes.

24 Q. So you have just seen it on that
25 one website that's attached to your declaration?



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1 I guess it's exhibit 7. Is that right?

2 A. That's correct, yes.

3 Q. You said earlier that you're not
4 the one who printed out this document that's
5 attached as exhibit 7 to your declaration,
6 correct?

7 A. Document that's attached to exhibit
8 7. Well, I didn't print it out, no.

9 Q. So you don't know whether this
10 crush drink blenders supposed category that's
11 shown in exhibit 7 actually exists or whether it's
12 merely a first term that was used to come up with
13 the printout that's in exhibit 7; is that right?

14 A. That's correct.

15 Q. Do you have any idea whether
16 consumers in the United States have ever heard of
17 a category of blenders called crush drink
18 blenders?

19 A. I have no idea.

20 Q. Do you have any evidence that
21 consumers in the U.S. are familiar with a category
22 of blenders called crush drink blenders?

23 A. No. Well, apart from the website
24 but I wouldn't consider that to be evidence.

25 Q. But exhibit 7 doesn't have any --



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1 doesn't refer to consumer awareness of the crush
2 drink blenders category; is that right?

3 A. In that it's on the website but
4 I don't know. I really don't know whether people
5 know about that website.

6 Q. But, as we established, the
7 printout that's here could have been a reaction to
8 a search, it's not necessarily that the
9 term existed before --

10 A. Oh, I see what you're saying. No,
11 I was under the impression the machine was called
12 a crush blender from the website but ...

13 Q. Maybe we're talking about two
14 different exhibits. So exhibit 7 appears to be
15 a printout from, I guess, this BizRate website
16 which appears to have a category around it called
17 crush drink blenders that you referred to.

18 A. Okay, BizRate. Some
19 blenders ... crush drink blenders. Yes.

20 Q. Is that separate from exhibit 8
21 which appears to be a printout from, reading the
22 bottom of the page attached to exhibit 8,
23 blackanddeckerappliances.com which refers to or
24 has a picture of a blender?

25 A. The Crush Master, yes.



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1 Q. Meaning Crush Master?

2 A. Yes.

3 Q. Okay.

4 So focusing now on exhibit 7, which has
5 this BizRate website printout, this crush drink
6 blenders alleged category that you say in your
7 declaration exists, just so I make sure we're
8 talking about the same thing when I asked the
9 question before, before your declaration was put
10 together for you and this web page was printed out
11 for you had you ever heard of a category of
12 blenders called crush drink blenders?

13 A. No.

14 Q. And you don't know whether
15 consumers in the U.S. are familiar with the
16 category called crush drink blenders; is that
17 right?

18 A. No, no.

19 Q. Prior you said that you didn't
20 create the document that's been attached as
21 exhibit 7 to your declaration. You don't know
22 whether crush drink blenders was an actual
23 category that existed or whether it was kind of
24 a category that came about because someone entered
25 a search term for that. Is that correct?



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1 A. No, I don't know.

2 Q. Turning back from the exhibits back
3 to the text in your declaration, if you could look
4 at paragraph 24 which states:

5 "As far as I am aware, the ORANGE CRUSH
6 brand is not known in the United Kingdom."

7 Do you see that?

8 A. Hold on one second. 24 ... okay,
9 I've got it.

10 Q. So on what basis did you make that
11 statement that the Orange Crush brand is not known
12 n the United Kingdom?

13 A. On the basis that I don't know of
14 it. Well, I didn't know of it before this all
15 came up.

16 Q. Before this all came up?

17 A. Yes.

18 Q. Did you ever ask anyone else to do
19 a survey of people in the U.K. to see whether they
20 had heard of the Orange Crush brand?

21 A. No. But, I mean, I haven't seen it
22 in my sort of wanderings of the shops. So I don't
23 know about it.

24 Q. So then in the rest of paragraph 24
25 you say:



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1 "I had never heard of ORANGE CRUSH brand
2 soda as a consumer."

3 A. No.

4 Q. Is that right?

5 A. Yes.

6 Q. Had you heard of the Orange Crush
7 brand other than as a consumer before this
8 proceeding?

9 A. With all this stuff, yes -- I mean,
10 when all this stuff came up, that was when
11 I became aware of it.

12 Q. But only in connection with this --

13 A. Oh yes. I'm not aware of it as
14 a brand myself but I have not been to America very
15 often, so ...

16 Q. If you could look back at the
17 Guardian article that was marked as DP/6 and again
18 looking at page 4 of the paragraph you looked at
19 previously it says:

20 "One of the other founders, James Deen,
21 claimed to have had the idea for the chain ..."
22 referencing the CRUSSH chain -- S.?

23 A. Yes.

24 Q. "... in the U.S."

25 Do you believe that statement is



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1 accurate?

2 A. Yes, it was based on him going to
3 see a company called, which I think is based in
4 California, called Jamba Juice where he spent some
5 time researching that.

6 Q. Had he actually worked in the
7 United States?

8 A. I've got no idea.

9 Q. It says here that he got the idea
10 for the chain while working in the United States?

11 A. I didn't know that he worked in the
12 United States. He probably did. I've got no
13 idea. I can't remember.

14 Q. But if he did work in the
15 United States it's possible that he came across
16 the crush soda that's available in the U.S.?

17 A. I have no idea. I mean, I'm sure
18 it's possible. I mean, he was very --
19 specifically, I remember the whole conversation
20 about Jamba Juice because I hadn't heard of Jamba
21 Juice and he was raving about it and I was wanting
22 to put a healthy fast food cafe together. So
23 that's how it sort of came together.

24 Q. Do you know whether crush soda,
25 crush-branded soda, is sold in Europe other than



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1 the U.K.?

2 A. I don't know. I'm not aware of it
3 myself, no. Oh, what, your crush brand soda --

4 Q. Well, a crush --

5 A. -- or any orange soda?

6 Q. No, not any orange soda.

7 A. Oh, okay.

8 Q. Are you aware that there are other
9 orange sodas --

10 A. I'm not aware of one, no.

11 Q. In paragraph 25 of your
12 declaration, you say:

13 "FANTA is the best known orange soda in
14 Europe."

15 Do you see that?

16 A. Yes.

17 Q. What is the basis for that?

18 A. Personal experience. That's the
19 one I know commonly.

20 Q. So a more accurate statement would
21 be "the orange soda I'm most familiar with is
22 Fanta"?

23 A. Yes, Fanta. There is another one
24 actually I left out of that called Orangina, which
25 my wife reminded me was her favorite drink. But



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1 Fanta or Orangina are well-known ones, yes.

2 Q. Well, you don't know if they are
3 well known but they are known to you and your
4 wife?

5 A. Well, they are commonly available
6 if that makes sense.

7 Q. And is that throughout Europe or
8 just in the U.K.?

9 A. I don't know about throughout
10 Europe. In the countries of Europe I've been to
11 you can get them.

12 Q. What are those countries?

13 A. France and Italy and Switzerland,
14 I think. I think that was a Fanta one or
15 Orangina. I can't remember specifically which
16 ones are in which but those are the ones that
17 I have come across in my travels, as it were.

18 Q. Do you have any evidence about what
19 orange sodas are the best selling orange sodas in
20 Europe?

21 A. No, I don't.

22 Q. And you do have any evidence about
23 which brand of orange sodas people in Europe are
24 most familiar with?

25 A. No, not other than the ones apart



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1 from seeing them in the vending machines and
2 petrol stations and things like that where you see
3 these things.

4 Q. Looking at paragraph 26 of your
5 declaration, you say:

6 "There would be no reason for us to
7 associate CRUSSH with a carbonated soda drink. In
8 fact, we would not want to associate our
9 restaurant with a carbonated soda which many
10 people associate as not being a healthy product."

11 A. Yes.

12 Q. In that second sentence where you
13 say:

14 "In fact, we would not want to associate
15 our restaurant with a carbonated soda which many
16 people associate as not being a healthy product."

17 When you say "carbonated soda" in that
18 context, are you referring to carbonated sodas in
19 general or are you specifically referring to my
20 client's product?

21 A. No, carbonated sodas in general are
22 not generally seen as healthy products over here.

23 Q. They are not generally seen what?

24 A. They are not generally seen as
25 healthy products over here. No, it was not



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1 personal to your client.

2 Q. I'm just going through and making
3 sure I don't have any other questions. So from my
4 perspective we may be very close to an end but let
5 me just have a few minutes to think about that.

6 (Pause)

7 Those are all of my questions.

8 MR. DRANGEL: I just have a couple of
9 follow-ups.

10 Redirect examination by MR. DRANGEL:

11 Q. If you could JUST take a look at
12 your declaration, paragraph 17, you indicated:

13 "We selected the term 'crush' because it
14 has a number of different meanings."

15 Could you explain that to me?

16 A. Yes. Well, just in terms of all
17 the sort of crushing-type words that we explored
18 to donate a fruit that had been pulped into
19 a juice, this had other meanings which were
20 attractive. So I don't know about in the U.S. but
21 in England "crush" is a sort of love term. If you
22 have a crush on someone you are -- you "fancy"
23 them I think is probably the right word. So it
24 was attractive because of that as well.

25 So it was not only donating the crushing



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1 of the actual fruit but this point of attraction
2 as well, which --

3 Q. Any other meaning that you are
4 aware of?

5 A. -- made sense.

6 Well, the obvious drink connotation here
7 which is just a fruit crush.

8 Q. As far as you know a smoothie drink
9 is commonly referred to as "crush" in the U.K.?

10 A. No. A smoothie drink isn't, no.

11 Q. Okay. So what is?

12 A. It's a summer drink. If you make
13 a crush in the summer, it's sort of crushed ice
14 and fruit juice and it's a sort of summer -- it's
15 quite often a child's drink. Well, when I was
16 a child it was but also I think latterly it also
17 became an alcoholic drink as well.

18 Q. So it was common to use different
19 kinds of fruit as you describe in paragraph 20,
20 grapes and blueberry and maybe strawberry?

21 A. Yes. Probably not blueberry --
22 they are not that common here -- but certainly
23 grapefruit and orange and lemon and things like
24 that, yes, and grape.

25 Q. And it would be for, I guess,



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1 for -- okay, strike that.

2 To make the smoothies, what devices do
3 you use?

4 A. To make our smoothies?

5 Q. Yes?

6 A. Blenders.

7 Q. Okay.

8 Do you know what's the purpose of using
9 a blender?

10 A. Well, it's to crush up the fruit,
11 to crush it up into the drink because our
12 smoothies are made with yogurt so it crushes the
13 fruit and blends it into the yogurt.

14 Q. It also is to crush ice? Do you
15 use ice?

16 A. Yes, we did at the beginning for
17 some years and then we decided to stop using ice
18 because they tasted better without ice. But at
19 the beginning we put in, I think, something like
20 four ice cubes for every smoothie. But that was
21 stopped, yes.

22 Q. If you take a look at exhibit 8.

23 A. 8. Hold on.

24 Q. Do you have that?

25 A. Yes, hello.



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1 Q. Do you see exhibit 8?

2 A. Yes.

3 Q. And it talks about features for the
4 blender?

5 A. Yes.

6 Q. And it indicates:

7 "475 watts of power to handle blending,
8 pureeing, crushing ice and more."

9 Is that, as far as you know, common
10 features that a blender handles?

11 A. Yes. I mean, we don't actually
12 particularly use this one but that looks very
13 similar to ones we use.

14 Q. Do you know if blenders have
15 different options for pureeing, crushing --

16 A. They have different programs, yes.
17 I couldn't tell you whether there was a specific
18 one that says "crushing" but I don't know the
19 terminology of it.

20 Q. Personally have you come across
21 a blender that indicates there's option "crush"?

22 A. Well, yes, but it's slightly away
23 from this blending business. There was a juice
24 machine that we looked at. So this is for making
25 pure fruit juice rather than the smoothies and



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1 that was a crushing machine. It didn't call
2 itself the crushing machine but it effectively
3 crushed the thing, but it was very unwieldy and
4 tended to explode. So we decided not to use it.

5 But that was also -- one of the reasons
6 behind the whole crushing thing was that there was
7 this juice extractor that crushed the fruit to get
8 the pure juices.

9 Q. As far as the definitions that are
10 in exhibit 3, exhibit 4 --

11 A. These are the dictionary
12 definitions?

13 Q. Yes.

14 A. Hold on.

15 Q. I think there might be another
16 one ... exhibit 3 and 4, are there any definitions
17 in there that look unusual to you or inaccurate as
18 far as your understanding of what the term "crush"
19 means?

20 A. Yes, there was one but it was
21 something to do with leather which I hadn't heard
22 of before. I've just got to get them in front of
23 me. It's 4 and 3?

24 Q. Right.

25 A. Hold on. I can't find 3. Sorry,



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1 not in 4 I can't see. That's a thesaurus:

2 "Fruit crush -- drink produced by
3 squeezing or crushing fruit."

4 That's normal over here. Exhibit 3 I'm
5 just trying to find. Hold on. Okay, dictionary
6 definition:

7 "To press or squeeze with force ...
8 squeeze, extract."

9 "To finish drinking": I didn't know that
10 one, an archaic use of it. Then
11 Dictionary.com ...

12 Q. Anything else?

13 A. I'm just going through the
14 Dictionary.com one. There are quite a lot of
15 them, hold on. Then, yes, there was this one that
16 says:

17 "Leather that has had its grain pattern
18 accentuated."

19 I didn't know about that. Otherwise
20 they seem fairly commonplace, yes.

21 Q. So at the time of your declaration
22 you were aware of the other common definitions of
23 what "crush" meant; is that correct?

24 A. Yes.

25 MR. DRANGEL: Okay, I have no further



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1 questions. I am trying to think if we need to
2 agree to anything on the record. I don't think we
3 need to. We'll just follow the same procedure
4 that we have in the past.

5 (Whereupon, the deposition concluded at 3:32 p.m.)
6
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CERTIFICATE OF DEPONENT

I, JAMES PETER NEEDHAM LEARMOND, hereby certify that I have read the foregoing pages, numbered 1 through 90, of my deposition of testimony taken in these proceedings on this 31st day of July, 2009 and with the exception of the changes listed on the next page and/or corrections, if any, find them to be a true and accurate transcription thereof.

Signed: 

Name: JAMES PETER NEEDHAM LEARMOND

Date: 22nd September 2009

Acknowledged by James Peter
Needham Learmond before
me on 25th September 2009
at 6 High Street Ross-on-Wye.
Hereby sworn UK



KEITH SHAWCROSS
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CERTIFICATE OF COURT REPORTER

I, GEORGINA FORD, an Accredited Real-time Reporter and Member of the British Institute of Verbatim Reporters, hereby certify that the testimony of the witness JAMES PETER NEEDHAM LEARMOND in the foregoing transcript, numbered pages 1 through 90, taken on this 31st day of July, 2009 was recorded by me in machine shorthand and was thereafter transcribed by me; and that the foregoing transcript is a true and accurate verbatim record of the said testimony.

I further certify that I am not a relative, employee, counsel or financially involved with any of the parties to the within cause, nor am I an employee or relative of any counsel for the parties, nor am I in any way interested in the outcome of the within cause.

Signed:

Georgina Ford (SR)

Name: GEORGINA FORD, MBIVR

Date:

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IN THE UNITED STATES PARENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DR PEPPER/SEVEN UP, INC.

Opposer/Petitioner

v.

KRUSH GLOBAL LIMITED,

Applicant/Registrant

Consolidated
Proceedings

Opposition No.
91180742

Cancellation No.
92048446

TELEPHONIC DEPOSITION OF
JAMES PETER NEEDHAM LEARMOND

VOLUME I

July 31, 2009
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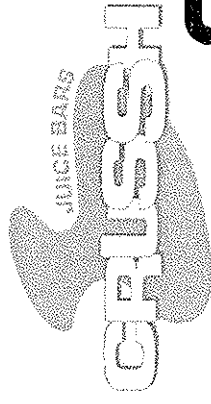
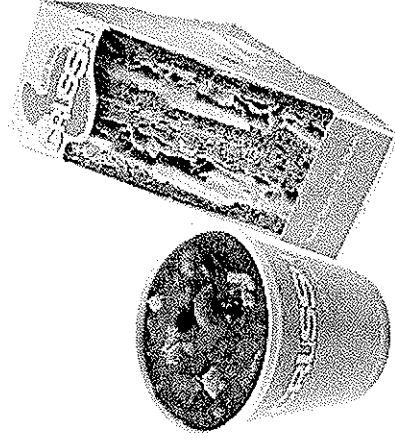
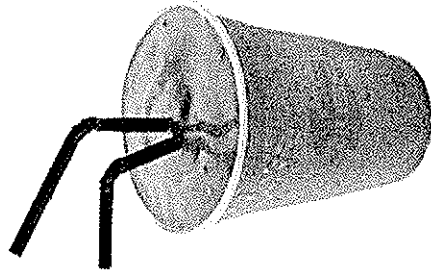
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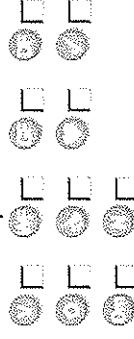
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Our noodle salads & sushi wraps are low fat & perfect for a healthier lunch alternative to lettuce

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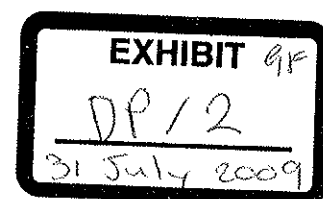
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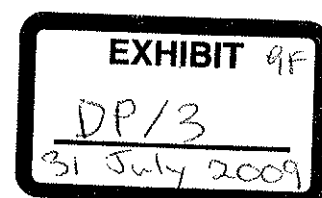
Snacks and Desserts - Nutritional Information (per 100g)

	Energy (KJ)	Calories	Protein (g)	Carbohydrates (g)	Of Which Sugar	Fat (g)	Saturated Fats (g)	Fibre (g)	Salt (g)	Sodium (g)	Calories Per Serving
Natural Wasabi Peas ~ NEW!	1724.8	411.6	15.7	66.6	7.8	8.8	3.9	10.8	-	0.1	294
Wheat-free Lemon & Poppy Seed Loaf ~ NEW!	1460	349	4.6	39.9	26	19	10.9	1.6	-	0.2	-
Wheat-free Orange & Pumpkin Seeds Loaf ~ NEW!	1415	338	4.9	37.6	24.4	18.6	10.1	1.3	-	0.2	-
Carrot Cake	1334	319	5	33.3	20.9	18.4	4.6	4.1	-	0.2	-
Chocolate Cake	1712	408	4.2	54.7	NA	19.4	NA	NA	NA	NA	469.2
Chocolate Brownie	1645	412	5.2	49.2	37.6	21.4	10.7	3	-	0.2	-
Eat Natural Bar	-	-	-	-	-	-	-	-	-	-	-
Flapjack	1706	408	4.9	49.9	28.1	20.9	8.8	4.5	-	0.16	-
Green & Blacks Organic Chocolate	-	-	-	-	-	-	-	-	-	-	-
Kettle Chips	-	-	-	-	-	-	-	-	-	-	-
Mixed Fruit & Nuts	-	-	-	-	-	-	-	-	-	-	-
Munchy Seeds	-	-	-	-	-	-	-	-	-	-	-
NAKD Bar	-	-	-	-	-	-	-	-	-	-	-
Organic Chocolate Chip Hazelnut Cookie	1614	457	5.8	50.3	23.7	25.8	10.3	2.3	-	0.2	228
Organic Double Chocolate Cookie	1479	421	5	60.8	36.7	17.6	8.2	2.7	-	0.2	210
Organic Oat & Raisin Cookie	1702	406	4.8	55.8	36.8	18.2	10.4	2.7	-	0.2	203
Organic Chocolate Mocha Cake	2173	522	9.7	40	-	35.9	-	-	-	-	-
Organic Almond Bliss Cake	2002	479	13.5	49	-	25.4	-	-	-	-	-
Terra Crisps	-	-	-	-	-	-	-	-	-	-	-



Coffee & Hot Drinks - Nutritional Information (per 100g)

	Energy (KJ)	Calories	Protein (g)	Carbohydrates (g)	Of Which Sugar	Fat (g)	Saturated Fats (g)	Fibre (g)	Salt (g)	Sodium (g)	Calories Per Serving
Organic Americano	30	7	0.6	0.7	0.7	0.2	0.1	-	-	-	-
Organic Cappuccino	105.8	-	5.9	7.6	7.5	5.8	3.6	-	-	-	-
Organic Espresso	-	-	-	-	-	-	-	-	-	-	-
Organic Latte	194.4	-	10.5	13.2	13.2	11.2	7.0	-	-	-	-
Organic Hot Chocolate	227	302	4.4	14.4	3.8	3	0.9	-	-	-	-
Organic Earl Grey Tea	18	4	0.3	0.4	0.4	0.2	0.1	-	-	-	-
Organic English Breakfast	18	4	0.3	0.4	0.4	0.2	0.1	-	-	-	-
TEA INFUSIONS	-	-	-	-	-	-	-	-	-	-	-
Berry & Fruit Tea Infusion	3	1	-	0.2	-	-	-	-	-	-	-
Camomile Tea Infusion	3	1	-	0.2	-	-	-	-	-	-	-
Green Tea Infusion	3	1	-	0.2	-	-	-	-	-	-	-
Mint Refresher Tea Infusion	3	1	-	0.2	-	-	-	-	-	-	-





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Goods and Services

CRUSSH

IC 043. US 100 101. G & S: Restaurant, catering, snack bar and cafe services; provision of prepared food; food and drink preparation and presentation services; bar services; catering services for the provision of food and drink; preparation of food stuffs or meals for consumption off the premises; sandwich and salad bar services; wine bar services

Standard Characters Claimed
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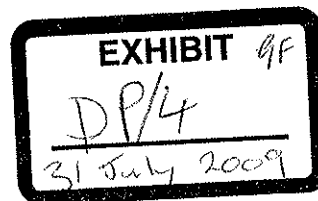
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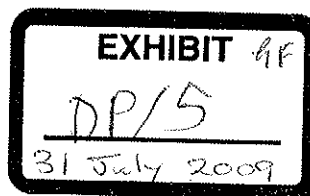
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The Jane Martinson interview

James Learmond: The juice bar founder who wouldn't be crushed

Despite plum connections such as David Cameron, the entrepreneur says he endured years of 'total pain'

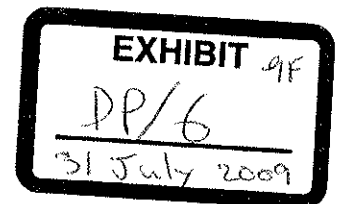
Jane Martinson

The Guardian, Friday 29 September 2006 10.26 BST

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Photograph: Ramonn McCabe



James Learmond bought a proper briefcase when he started at senior school, prompting one fellow pupil to dub him "the businessman". Learmond went on to open Crussh, the juice bar chain, while the schoolfriend, David Cameron, went on to run the Tory party. Which is probably what happens when your old school is Eton.

When we meet in one of his central London juice bars, Learmond, tall and larger than your average wheatgrass drinker, is wearing a navy suit with regulatory silk pocket handkerchief, open-necked shirt and monogrammed cufflinks. He looks every inch the Old Etonian City gent he was before he founded Crussh in 1998.

A few months older than Cameron, at 40, he pedals around London on a folding bike

and shares an air of cheery bonhomie and vague ambition with the wannabe prime minister. "I wasn't that interested in business until the day I started work," he says cheerfully. "I wanted to do something that was going to make a difference and be more exciting. An entrepreneurial-type thing."

He can seem a bit like Lord Percy, Blackadder's sidekick, but his optimism is helped by the fact that after eight years his business finally seems to be bearing fruit - excuse the pun.

"We've really got to critical mass this year," he says. "It just seems to have a momentum. We're going to open six stores this year. It's started to make proper real sense." He is boundlessly enthusiastic after what he admits have been eight tough years. "The real vision is to make Crussh a global business and I will do whatever it takes to do that."

This week, Crussh opened its 15th orange-and-green juice bar in central London, selling organic salads, porridge and smoothies with names like Green Goddess and Love Juice. Learmond, who owns 40% of the company, plans another two bars by the end of this year as well as his first overseas franchise. Further ahead, there are plans for Crussh bars in other big cities, airports and railway stations as well as a possible venture into bottled smoothies.

Two financial institutions have approached the former commercial property developer with a view to taking a stake in Crussh, which is expected to make a profit of about £500,000 on sales of £5m by the end of March. Innocent, the bottled smoothie rival, predicts a market for healthy juices of as much as £170m by 2007, although such predictions have proven over-optimistic in the past.

The improvement is largely due to the increased interest in healthier food, for which Learmond praises TV celebrities such as Jamie Oliver. "People are really changing their attitudes to food and that's why things are getting better."

Coffee wars

The increasing interest has attracted competition. Boost Juice, the Australian market leader, has paired up with the duo behind Millie's Cookies and plans to open its first UK outlet this year. The Californian chain Jamba Juice, which has 533 bars in the US, has begun making noises about international expansion. Surely this terrifies the man who

wants his own much smaller outfit to become the "Starbucks of the juice world"?

"Does it make me nervous? No," says Learmond. He says the increasing competition can only raise awareness and make the market for healthy foods bigger. "We won't be competing for a little while," he says of Boost. "Then I think we'll both be big enough to survive, in the way that Starbucks and Caffè Nero exist side by side."

In the last few years the fruit squeezers have been crushed by caffeine. The Seattle-based Starbucks opened its first UK cafe in May 1998, around the same time as Crussh and a whole host of rivals with names such as Squeeze and Fluid. At the time, newspapers were full of articles heralding juice as the City's new champagne. There were supposed to be 40 Crussh outlets alone by 2004.

When did it start to go wrong? "Almost immediately," says Learmond, with one of his frequent laughs.

Coffee groups such as Caffè Nero and Starbucks benefited from relatively low raw material costs and some had large corporate parents to snaffle the best sites. The ensuing coffee bar wars pushed up rents and privately owned start-ups such as Crussh struggled to get any real estate, let alone prime sites.

"There were quite a lot of juice bars that started up at the same time," says Learmond. "They never got to more than four stores and went under."

In 1998, when Crussh started, it had revenues of £200,000. Starbucks reported revenues of £244m in the UK last year. Juice also suffered from a "niche and hippyish" reputation in the UK.

So how did Learmond survive when so many others failed? "I was very lucky. I was lucky with introductions to people who had money. And we were supported by our shareholders, basically." Ah, his powerful friends? "There's no OE thing," he says, meaning Old Etonian. "People imagine that people help each other out, but there's no fantastic network or anything."

Tim Levene, who sold rival Fresh n' Smooth to Learmond six years ago and remains a shareholder, credits him with tenacity. "I'm surprised he has stuck it out so long, not because he couldn't do it, but it's been such a long, hard slog."

Crussh was started by three men, but Learmond bought out his fellow founders at the

end of 1999. "It was very difficult to run a start-up company with three people and it was easier in the end to buy them out," he says. "There was no obvious skill divide."

One of the other founders, James Deen, claimed to have had the idea for the chain while working in the US. "It wasn't specifically James's idea but he was doing the interviews," says Learmond, who himself claims credit for the confusing double "s" in the name - to differentiate the company from another with a similar trademark.

The old schoolfriends - yes, both Jameses were OE - had been introduced over a property deal and had started talking about wanting to do something different, he says. Learmond had been advised by nutritionists to start eating more fruit and veg to clear up some facial eczema. "I was looking to do something as I couldn't get this type of food. You had to have coffee or pizzas or burgers or dodgy sandwiches," he says. His belief that other office workers hankered after a healthier lifestyle kept him going long after Deen had left.

As did his wife, who continued to work as an analyst in the City until very recently. The couple, who live in a Hertfordshire farm, are expecting their third child in as many years in January.

The first five years, as the company haemorrhaged cash, sound grim. Learmond put in £100,000 of his own money and then kept having to go cap in hand to outside investors. His brother owns 20% of Cruss. In 2001, as the economy nosedived, he was forced to go to his bank manager on Pall Mall to ask for £500,000.

He now pays himself about £50,000 a year and says he has used a lot of his and his wife's savings. He has a lifestyle some would envy, plotting strategy from his home office or the company's Mayfair headquarters, but if any of the two institutions he is talking to came up with an takeover offer, he would obviously be interested.

"My preference would be to sell a further stake in the company and then expand, but we would talk to anybody who came up with the notion of a majority stake as well. Whatever happens, I would like to stay involved. I've come this far, I'd like to retain a stake."

For his 40th birthday, 120 people were served vodka smoothies and peach and passion fruit bellinis at Cruss. David Cameron was among the guests. His friend has only positive things to say about his former schoolmate, that he was terribly clever and

terribly interested in politics. "The rest of us just wanted to do enough to pass our A levels. He was really keen on it."

In contrast, the Edinburgh University graduate seems largely apolitical, apart from an increasingly common interest in the environment. His only donations are to Friends of the Earth. "I did actually vote for Tony Blair once," he says. When? "The second one. When was that? 2001?"


But he disagrees with the "wars and stuff" and the "spin thing".

Pushed for a schoolboy anecdote, he later phones to tell me he and Cameron jointly visited an elderly lady living near the school once a week. At 16, the young Dave was "really good" at such flesh-pressing, he admits.

Learmond went to Edinburgh to study economic history and then started work, setting up on his own after a few years at commercial property firm Hillier Parker. Whatever happens to Crussh, he wants to stay an entrepreneur.

"I genuinely think it's a good thing to end fast food and, yes, I'd like to earn a lot of money. But I'd like to do other projects and not necessarily do it in the same way as Crussh. I don't want to go through that same total pain."

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Ingredients to use: 0.5 full Cranberry juice
 0.75 oz. Peach Schnapps

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Directions: 0.5 full Pineapple Juice
1.0 oz. OVAL Vodka
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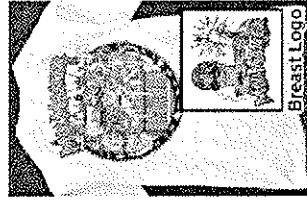
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WOW

This drink is soooo good. My husband didnt like it because he said it was a chick drink

elmo said on 2008-06-28 01:23:51.563

sex on the beach

a sex on the beach is made with pure orange juice not pineapple juice and the red colour comes from a drink called grenadine not cranberry

said on 2008-07-14 17:17:49.233

Another Reciepe for Sex on the Beach

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